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SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 99

FRANK ANDREW PAYNE, PETITIONER,

vs.

STATE OF ARKANSAS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

Petition for Certiorari
Filed March 2, 1957
Certiorari Granted April 8, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 99

FRANK ANDREW PAYNE, PETITIONER,

vs.

STATE OF ARKANSAS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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11 IN THE JEFFERSON COUNTY CIRCUIT COURT
OF THE STATE OF ARKANSAS

THE STATE OF ARKANSAS

VS.

FRANK ANDREW PAYNE

Information for Murder in the First Degree—Filed Oct. 14, 1955

I, PAT H. MULLIS, PROSECUTING ATTORNEY WITHIN AND FOR THE Eleventh JUDICIAL CIRCUIT OF THE STATE OF ARKANSAS, of which Jefferson County is a part, in the name and by the authority of the State of Arkansas, on oath, accuse the defendant Frank Andrew Payne of the crime of Murder in the first degree committed as follows, to-wit: The said defendant on the 4th day of October, 1955, in Jefferson County, Arkansas, did then and there wilfully, unlawfully, and feloniously, and with malice aforethought, and after premeditation, and deliberation, kill and murder one J. N. Robertson by beating the said J. N. Robertson on the head and body with a certain deadly weapon to-wit: A metal bar then and there held in the hands of the said Frank Andrew Payne, from the wounds so inflicted the said J. N. Robertson did then and there die.

contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Arkansas.

/s/ PAT H. MULLIS
Prosecuting Attorney.

Subscribed and sworn to before me this 14th day of October, 1955.

/s/ M. V. MEAD,
(Seal) *Circuit Clerk.*

(THERE APPEARS ON THE REVERSE SIDE OF THE INFORMATION THE FOLLOWING)

Issue Bench Warrant and no bail allowed.

/s/ HENRY W. SMITH
Judge.

12 (File Endorsement Omitted)

No. 22551

THE STATE OF ARKANSAS

VS.

FRANK ANDREW PAYNE, *Defendant.*

INFORMATION FOR
Murder in the First Degree

INDORSED

WITNESSES:

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32 IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ARKANSAS

Motion to Quash Panel of Petit Jurors—Filed Jan. 10, 1956

PETITIONER, FRANK ANDREW PAYNE, for his Motion to Quash the Panel of Petit Jurors of Jefferson County, Arkansas, for the October, 1955 Term, states to the Court that:

1. Petitioner, FRANK ANDREW PAYNE, is a member of the Negro Race and is a resident of Jefferson County, Arkansas.

2. For a number of years, more than the preceding 50 years, the Circuit Judge of Jefferson County, Arkansas, has without exception selected jury commissioners, who were members of the White Race, and at no time has the Circuit Judge of Jefferson County, Arkansas, selected a Negro as a member of the jury commission.

3. At the present time, there are 19,452 qualified electors in Jefferson County, Arkansas; of that number approxi-

mately 5,774 qualified electors or approximately 30% are members of the Negro race and approximately 70% are members of the White race.

4. According to the United States census figures of 1950, the population of Jefferson County in that year was in the total amount of 76,075, classified as follows:

Native Born White	37,792	Negroes	37,835
Foreign Born White	360	Other Races	88

5. For the October, 1947 Term of the Jefferson Circuit Court, the Jury Commission selected only 2 Negroes
33 out of a total of 31 persons on the panel of petit jurors.

6. For the March, 1948 Term of the Jefferson Circuit Court, the Jury Commission selected no Negroes out of a total of 31 persons on the panel of petit jurors.

7. For the October, 1948 Term of the Jefferson Circuit Court the Jury Commission selected 1 Negro out of a total of 38 persons on the panel of petit jurors.

8. For the March, 1949 Term of the Jefferson Circuit Court, the Jury Commission selected 2 Negroes out of a total of 24 persons on the panel of petit jurors.

9. For the October, 1949 Term of the Jefferson Circuit Court, the Jury Commission selected 2 Negroes out of a total of 32 persons on the panel of petit jurors.

10. For the March, 1950 Term of the Jefferson Circuit Court, the Jury Commission selected 1 Negro out of a total of 64 persons on the panel of petit jurors.

11. For the October, 1950 Term of the Jefferson Circuit Court, the Jury Commission selected no Negroes out of a total of 29 persons on the panel of petit jurors.

12. For the March, 1951 Term of the Jefferson Circuit Court, the Jury Commission selected 2 Negroes out of a total of 54 persons on the panel of petit jurors.

13. For the October, 1951 Term of the Jefferson Circuit Court, the Jury Commission selected 1 Negro out of a total of 35 persons on the panel of petit jurors.

14. For the March, 1952 Term of the Jefferson Circuit Court, the Jury Commission selected 2 Negroes out of a total of 31 persons on the panel of petit jurors.

15. For the October, 1952 Term of the Jefferson Circuit Court, the Jury Commission selected only 1 Negro out of a total of 27 persons on the regular jury panel and no Negroes on a special panel.

16. For the March, 1953 Term of the Jefferson Circuit Court, the Jury Commission selected 2 Negroes out of a total of 42 persons on the panel of petit jurors.

17. For the October, 1953 Term of the Jefferson Circuit Court, the Jury Commission selected 6 Negroes out of a total of 46 persons on the panel of petit jurors.

18. For the March, 1954 Term of the Jefferson Circuit Court, the Jury Commission selected 1 Negro out of a total of 26 persons on the panel of petit jurors.

19. For the October, 1954 Term of the Jefferson Circuit Court, the Jury Commission selected no Negroes out of a total of 39 persons on the panel of petit jurors.

20. For the March, 1955 Term of the Jefferson Circuit Court, the Jury Commission selected 4 Negroes out of a total of 40 persons on the panel of petit jurors.

21. For the October, 1955 Term of the Jefferson Circuit Court, this being the present term of the Court, the Jury Commission selected 2 Negroes out of a total of 58 persons on the panel of petit jurors, one of whom is now deceased and the other being over the age of 65 years.

22. Only 23 different members of the Negro Race have been selected for the jury panel by the Jury Commission during the past 9 years and more than half of those selected have been persons over the age of 65 years or were under such circumstances that they would probably be disqualified for actual jury service. That in those instances where Negroes have been included on the jury panels referred to herein, Negroes have been discriminated against by an arbitrary and inapportionate limiting of their number by the Jury Commissioners who have not sufficiently acquainted themselves with the qualifications of all potential jurors.

23. That prior to the March, 1947, Term, not a single Negro had been called for jury service in more than 50 years in Jefferson County; that a Motion was sustained in the case of State of Arkansas Vs. Albert Wilkerson, to quash the panel selected by the Jury Commission for the March, 1947, Term, on account of the said racial discrimination; and that the Jury Commission then called approximately 13 Negroes for jury service for the said case then pending and that the number of Negroes called for jury service since that time has never reached even half the number called in the March, 1947, Term.

24. Negroes have been systematically excluded from jury service in the Circuit Court of Jefferson County, Arkansas, for many years prior to the trial of the petitioner and that such exclusion was because of color. Negroes were systematically excluded from jury service as members of the petit jury for the October, 1955, Term of the Jefferson Circuit Court.

25. The method for selecting the petit jurors in Jefferson County, Arkansas, does not conform to the mandate against racial discrimination contained in the Fourteenth Amendment to the Constitution of the United States of America.

WHEREFORE, premises considered, petitioner, FRANK ANDREW PAYNE, prays that this Court issue an Order quashing the panel of petit jurors selected by the Jury Commission to serve for the October, 1955 Term of the Jefferson Circuit Court and that petit jurors be selected in accordance with the laws of the State of Arkansas, and the United States of America.

PETITIONER PRAYS FURTHER that a hearing be al-
36 lowed him in order that he can show proof of the allegations set out herein.

Respectfully submitted,

/s/ WILEY A. BRANTON
Wiley A. Branton,
Attorney for Frank Andrew Payne

Duly Sworn to by Wiley A. Branton (Jurist Omitted in Printing).

37 IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ARKANSAS

Transcript of Evidence on Motion to Quash

BE IT REMEMBERED, That on the 10th day of January, 1956, being a day of the October Term, 1955, of the Jefferson Circuit Court, before the Honorable Henry W. Smith, the regular Judge thereof, the above entitled Motion to Quash Panel Of Petit Jurors came on for hearing, and in the course thereof evidence was introduced as follows, to-wit: The defendant being present in person in the proper custody of the Sheriff and by his attorney Wiley A. Branton.

APPEARANCES:

PAT H. MULLIS, Prosecuting Attorney, and REINBERGER & EILBOTT, for Plaintiff
WILEY A. BRANTON, for Defendant

38

The defendant, Frank Andrew Payne, in order to sustain the issues upon his own behalf upon the Motion to Quash the Petit Jury Panel, introduced witnesses and testimony, as follows, to-wit:

Mr. Branton: Now as to the Motion to Quash the panel of the petit jury I want to know first of all whether or not the Court and counsel will stipulate as to the fact that prior to the March Term of the court,—I am reading now from paragraph 23 of my motion, "That prior to the March, 1947, Term, not a single Negro had been called for jury service in more than 20 years in Jefferson County; that a Motion was sustained in the case of State of Arkansas Vs. Albert Wilkerson, to quash the panel selected by the Jury Commission for the March, 1947, Term, on account of the said racial discrimination; and that the Jury Commission then called approximately 13 Negroes for jury service for the said case then pending and that the number of Negroes called for jury service since that time has never reached even half the number called in the March, 1947, Term." I am not asking anybody to stipulate the fact as to whether or not it hadn't reached half that

number, I want to know whether or not you will agree that the record would so show that prior to March, 1947, that no Negro had served in Jefferson County for, (interrupted.)

The Court: I can't stipulate it because I don't know it.

Mr. Mullis: I can't for the same reason.

Mr. Branton: All right.

39 WALTER TRULOCK, JR., a witness being called by the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. Mr. Trulock, will you state your name please sir? A. Walter Trulock, Jr.

Q. Where do you live Mr. Trulock? A. North of Pine Bluff seven miles.

Q. How long have you lived in Jefferson County? A. 57 years.

Q. State whether or not at the present time you are a jury commissioner? A. I am.

Q. By whom were you appointed? A. I presume the Court—I don't know who.

Q. How did you receive notice of your appointment? A. By telephone.

Q. Do you know who phoned you? A. I don't remember, no. Mr. Mead I think it was.

Q. How long have you served as jury commissioner Mr. Trulock? A. We met here for one day.

Q. Was that during this term of court or immediately preceding this term of court? A. That's right.

The Court: Just a minute, to refresh your memory, did the Sheriff's office call you or someone out of the Sheriff's office?

A. That's right—Mr. Bradley.

40 Q. Have you ever served previously as a jury commissioner? A. I have.

Q. Do you know when you served as a jury commissioner? A. The year?

Q. Yes sir. A. No—about five or six years ago.

Q. Do you remember how many different years you have served? A. That's all.

Q. This is the second time that you have served as a jury commissioner? A. That is correct.

Q. Have you known any other persons who have served as jury commissioners? A. No.

Q. Other than, (interrupted) A. those that I have served with.

Q. Those that you have served with now? A. That's all.

Q. To your knowledge have you ever known of Negroes to serve as jury commissioners? A. Well, I have never known who they. None has served with me.

Q. Mr. Trulock, when did you first receive your notice to serve on the jury commission? A. That would be strictly a matter of memory, which is no good for me.

Q. Do you have any idea? A. Probably a week before I was called.

Q. Do you know when you were called? A. The month?

Q. Yes sir. Do you recall whether or not it was
41 in the fall of 1955? A. It was about—it was hot—we had the air conditioner on, I remember that.

Q. Where did you meet? A. Here.

Q. In this office? A. Yes.

Q. Were the other jury commissioners present? A. Oh, yes.

Q. Was anybody else present? A. While we were meeting?

Q. Yes sir. A. No sir, we were locked in.

Q. Locked in? A. Yes.

Q. State whether or not at that time you had a list of the qualified voters in Jefferson County? A. We did sir.

Q. Where did you get the list from? A. You mean who furnished it?

Q. Yes, who furnished it? A. Well, it was either the Judge or Mr. Mead—I don't remember who. They were brought to this office and turned over to us.

Q. Do you know whether or not this was before the first day of court? A. I don't know when the first day of court was sir.

Q. The first Monday in October. A. I couldn't correctly say. I could only tell by the day that I was paid—the warrant would show the date.

42 Q. Do you recall how many persons you were told to select on the panel? A. We were told to select

the petit jury, a civil jury and a grand jury—I think 12 alternates for the grand jury and 16 for one jury and 24 for another and 25 to put in the box to be called.

Q. Do you recall how many you were told to select for the criminal jury? A. Well, it would be just a matter of memory—I do not—somewhere around 24 to 36—I believe 36 in all.

Q. Were you given any special instructions regarding the caliber of persons to be selected? A. Yes sir, we were.

Q. Were you given any special instructions with reference to racial discrimination or the inclusion of women? A. I believe you had better phrase the question again please.

Q. Were you told whether or not you should or should not select Negroes for jury service? A. We were.

Q. Generally, do you recall what you were told about selecting them? A. Yes—we were told to get some.

Q. Were you told how many to get? A. No sir.

Q. Do you know how many Negroes were selected? A. No sir.

Q. Do you know whether or not any were selected? A. Yes sir.

Q. Do you know how they came to be selected, the particular Negroes who were selected? A. Well,
43 I couldn't answer the question in just a sentence—I would have to tell you the method which I personally used—we all did.

Q. That is exactly what I am trying to get to Mr. Trulock. A. Well, we were instructed to try to get a representative jury—one who would be qualified to serve and at the same time have some Negroes and some women. We had to take into consideration, of course, not only the qualifications of the ones we were trying to select, but also their occupations. We tried not to have too big a hardship on anybody we might pick; for instance, a man running a one-man's business would be a hardship on him; of course, we were first limited by taking off all those who had served within a year and were not qualified for that reason at the present time. We then set about to go through this bit list of qualified voters who had paid their poll taxes. I personally feel, and I don't know how the others feel, I felt that in the selection of a jury I could not take any-

body that I didn't know. He might be a better qualified man than the one I would call, but still I wouldn't know it, so I was limited again by my knowledge of the people whom I was trying to select. Unfortunately it looked like everybody I knew had served the last year and was disqualified from that. Then too, if a man lived way out in the country I felt that it was unjust to call him to serve on the jury which might be prolonged affair on account of his traveling, I therefore tried to get them as near to Pine Bluff as I could, which we couldn't, of course, and we had to get some up as far as Redfield and as far out as Wabbaseka and Altheirmer. I don't know of any other
44 method that we used in selecting that way except that.

Q. Mr. Trulock, offhand do you know the furtherest point from the courthouse within Jefferson County? A. I would guess it would be Reydel.

Q. Do you know how far approximately Reydel is from the courthouse? A. It is about 41 miles.

Q. Do you know whether or not there is a paved road all the way to Reydel? A. There is.

Q. Did you recommend any of the Negroes or not upon the panel? A. I would have to know who they were. I believe I could remember if I knew who they were.

Q. Do you know whether or not Ed H. Williams, a retired employee of the Arkansas Power & Light Company is on the present jury panel? Do you know whether or not Ed H. Williams, a Negro, a retired employee of the Arkansas Power & Light Company is on the present jury panel? A. No, I do not. I do not know him.

Q. Do you know whether or not Al Pennington, who operated a liquor store on north Cedar was on, (interrupted) A. I knew Al well. I think he was.

Q. He is now deceased? A. That's right.

Q. Do you know whether or not you recommended him? A. I would think that I did because I knew him.

Q. Did you first advance his idea,—I mean his name? A. Well, you are asking me to recollect and testify under oath things that I might not know for sure.

Q. Well, I am interested in the things you remember
45 from your own knowledge. A. I will have to say that I can't remember that then.

Q. How long did it take you to select the jury panel? A. All day.

Q. Did you go through all of the names in the poll tax book? A. We did.

Q. Do you know how many names are in there? A. No, but it is a volume that thick and many, many, names.

Q. State whether or not you are well familiar with approximately the proportion of population between the races in this county? A. You want me to give a guess?

Q. No sir, unless you, (interrupted) A. It would be a guess.

Q. have any knowledge at all. A. I would think it would be about 60—40.

Q. 60—40 in what proportion? A. 60 white, 40 Negro—I would guess it would.

Mr. Trulock, state whether or not you are personally familiar with very many Negroes in this county who might be qualified as jurors? A. I don't think I am sir.

Q. Do you think that you are qualified by knowledge to fairly select Negroes for jury service in this county? A. You mean, (interrupted)

Q. From your own knowledge? A. You mean am I prejudiced?

Q. No, I don't mean that. I want to know whether or not your general knowledge of the Negroes in Jefferson County among those who would be qualified for jury service is extensive enough that you could fairly select Negroes to serve on the jury panel? A. I think this; I have
46 lived in this county for 57 years; I think I would be as well qualified to select either white or black as anybody else.

Q. Do you know very many Negroes who would be qualified for jury service? A. I think so.

Q. Did you think of any while you served on this panel? A. Well, there were quite a few there I certainly would have selected, but they had already served the past year or had some other reason why they couldn't.

Q. Do you know how many male faculty members there are on the staff out at A. M. & N. College? A. I do not.

Q. Do you know any of them out there? A. I know the Reverend Paul Taylor quite well. I know Lawrence Davis.

Q. Do you know how many male faculty members there

are in the public high school system in Pine Bluff? A. I do not.

Q. Would you say that you know as many as 10 Negroes personally that you could think of now who would be qualified for jury service in this county? A. You mean business men?

Q. Just anybody who would be qualified? A. Oh, yes.

Q. Do you recall whether or not the names of any other Negroes were mentioned to the panel? A. Any other?

Q. Yes sir, other than the ones that were selected?

47 A. Oh, yes.

Q. How did you arrive at the selection of those that were selected—did you decide you wanted so many on there? A. No. We just go down the list and here is a man—we discussed him—what he would do or would not do—would it be impossible to serve or was he too old—what was his work—just those things—in fact, it is a very difficult operation to get a jury and we were coming to get anybody we thought would serve.

Q. Did you have an age limit in mind when you decided on whether they were too old to serve? A. Personally I did, yes.

Q. State the age limit? A. I think 65 to 70.

Q. Did you try not to select people over 65? A. Me personally?

Q. Yes sir. A. Well, that was one qualification that I had in mind, but it got so tough that to find them we did have to take them if they were 65.

Q. State whether or not anything was said as to how many Negroes should be included on the panel? A. There were no numbers mentioned except we were told to get a representative jury.

Q. Did you decide how many women you wanted on the jury? A. No.

Q. Do you know why more women were not selected? Do you know how many women were selected? A. I would think two just guessing.

48 Q. Do you know why there were not more women selected? A. No.

Q. Do you know why there were not more Negroes selected? A. No.

Mr. Branton: I believe that's all.

A. Thank you.

Mr. Branton: Does the state have any questions?
Mr. Mullis: No questions.

Witness Excused.

49 W. E. BOBO, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name please sir? A. W. E. Bobo.
Q. Where do you live Mr. Bobo? A. I live at 2113 West 17th Avenue, Pine Bluff.
Q. How long have you lived in Jefferson County? A. I have lived in Jefferson County since about 8, 1908.
Q. State whether or not you are at the present time a member of the jury commission? A. Yes sir.
Q. Do you recall when you received your appointment? A. I don't remember the date, no I don't.
Q. Do you remember the month you were notified? A. No I don't.
The Court: Let me interrupt to save a little time. The record will reflect all of that, which is bound to have been before the term of court. All right sir.
Q. State whether or not this is the first time you have ever served on the jury commission? A. No sir, I served before this time.
Q. How long ago? A. Possibly four or five years ago. I don't remember the exact date, but I have served before this last time.
Q. Do you know how many different times you have served on the jury commission? A. My recollection is two times—twice.

50 Q. Mr. Bobo, have you known other persons who have served as jury commissioners other than the ones you served with? A. I don't recall any of them, no.
Q. Have you ever known a Negro to serve on the jury commission in Jefferson County? A. Not while I was on the commission, no.
Q. Do you know how long it took you to select the jury panel? A. About all day—about one day.

Q. State whether or not you had a copy of the qualified voters of this county with you at the time that you selected them? A. We did.

Q. Do you know how many Negroes were selected on the present panel? A. I don't.

Q. Do you know whether any Negroes were selected? A. I know of one, yes.

Q. Who is that one selected? A. Al Pennington. He is deceased now however.

Q. Do you know how many women were selected? A. No I don't.

Q. Do you know how Al Pennington came to be selected by the jury commission? A. Well, the commission knew Al personally, all 3 of us did, and we thought he would make a good juror.

Q. Were you concerned as to how many Negroes should be on the jury panel? A. Well, we didn't know there was any special amount that had to be selected, no.

Q. Did you decide how many you would put on
51 there? A. Well, no, we didn't decide. We went through the list after we opened the list and we selected those that we thought would make good jurors.

Q. Did you have race in mind when you selected Al Pennington? A. No.

Q. Were you interested in getting any Negroes on the panel? A. We selected some. The record will show how many we selected, yes.

Q. Do you know why there were not more Negroes selected? A. No.

Q. Would you have selected a panel including more Negroes than whites? A. I think I would if it had been folks who we thought would have been good citizens and who had been reliable in their actions, I think yes.

Q. Mr. Bobo, how broad is your knowledge of Negroes in this county who would be qualified for jury service in your opinion? A. That I couldn't answer. I know quite a few colored people. I have been doing business with them quite awhile and I know quite a few. All of them wouldn't be qualified, they don't have poll tax receipts, therefore, wouldn't be eligible for jurors. We had to go by the list, people who paid their poll tax.

Q. Do you know how many Negroes are qualified voters in this county? A. I sure don't.

Q. Do you know approximately what percentage of
52 them are qualified voters? A. No I don't.

Q. When you decided on Al Pennington did you possibly too decide you should have a Negro on there? A. Well, we thought it was wise, a man that was,—of course, he was in the liquor business, but we all 3 of us had known him quite awhile and he had always been we thought a pretty kind of responsible citizen.

Q. When you selected Al Pennington were you selecting him as just another juror or were you selecting him with a special point in mind to get a Negro on your panel? A. Well, I don't know that we made anything special of that. We felt like the jury we were selecting was responsible citizens of the county.

Mr. Branton: I believe that's all.

The Court: Have you any questions?

Mr. Mullis: No sir.

Witness Excused.

53 E. L. WILLIAMS, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name please sir? A. E. L. Williams.

Q. Where do live Mr. Williams? A. In Pine Bluff.

Q. How long have you lived in Jefferson County? A. About 40 years.

Q. Are you at the present time a member of the jury commission? A. Yes.

Q. Is this the first time you have served on the jury commission? A. No.

Q. Do you know how many times previously you have served on the jury commission? A. Once I believe.

Q. Do you recall how long ago that was? A. I think it was about 10 years ago.

Q. During the times you have served as a jury commissioner were any Negroes on the jury commission? A. On the jury commission?

Q. Yes sir. A. No.

Q. What is your occupation? A. Banker.

Q. Have you ever known of a Negro to serve on the jury commission? A. Not that I know of.

54 Q. When the jury commission selected the present panel do you know how many Negroes were selected? A. I don't remember.

Q. Do you know whether or not any were selected? A. I know some were selected.

Q. Do you recall offhand the ones who were selected? A. I don't remember offhand.

Q. How did you arrive at the number of Negroes to be selected on the panel? A. As far as I know we didn't arrive at any particular figure.

Q. Was anything said about getting any Negroes on the panel? A. Not that I recall.

Q. Did you have race in mind when you selected the Negroes for the panel? A. Yes.

Q. Did you feel that there should be some on the panel? A. Yes.

Q. Did you think it should be on a proportional basis or any certain number? A. I didn't give that any thought.

Q. Was anything said as to how many should be on there? A. Nothing in particular. We decided that we should have some on each panel. I think we put some on each panel.

Q. Did you decide approximately how many should be put on each panel? A. No.

Q. Do you know how those who were selected, these Negroes, happened to be selected by the jury commission? A. By the parties we knew well, that is the 3 of us. We eliminated the ones that had been on the previous jury.

55 Q. Did you have before you at that time a list of persons who had served previously on juries? A. Yes, that were ineligible to serve again—we had the prior list for the past two years I think—they were not eligible to serve on this particular jury.

Q. Do you know how many women were selected? A. We selected some, but I don't remember how many.

Mr. Branton: I believe that's all.

Witness Excused.

56 ALLEN SHEPPARD, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name please? A. Allen Sheppard.

Q. Where do you live Mr. Sheppard? A. I live out across the Free Bridge.

Q. In Jefferson County? A. That's right.

Q. State whether or not you hold any public office in Jefferson County? A. I hold the office of County Clerk and Probate Clerk.

Q. How long have you held that position? A. This is my 8th year.

Q. Prior to that time did you hold any public office in Jefferson County? A. No.

Q. Prior to that time did you work in the courthouse in any capacity? A. Well, not for the county. I worked for the State Revenue Department which at that time had an office in the courthouse.

Q. How long have you lived in Jefferson County? A. All of my life.

Q. To your knowledge, Mr. Sheppard, have you ever known of a Negro to serve on a jury commission in Jefferson County? A. No. I am not familiar with the jury commissions—what I should say is I am not to familiar with the members that have been appointed to serve on jury commissions.

57 Q. In your capacity as County Clerk state whether or not you keep an official record of the qualified voters within Jefferson County, Arkansas? A. I do.

Q. Have you had occasion to go through the record of qualified voters in Jefferson County to ascertain the total number of voters? A. I have.

Q. Have you also had occasion to ascertain the total number of Negro voters? A. Yes.

Q. For the year 1953 will you state the total number of qualified voters within Jefferson County? A. These figures are approximate and I would say would be within a hundred of the correct total. My figures are taken from a photograph of the original record and in this instance for 1953

I went through the book and counted each one, white and colored, and on the basis of the record as furnished to me by the collector I find 18,315 names.

Q. That is the number who are qualified voters for the year 1953? A. As reflected by this record.

Q. How many of the total were Negroes? A. 5,641.

Q. And how many were white? A. 12,674.

Q. State whether or not the records that are in your office reflect whether or not the tax payer was colored or white? A. They do.

Q. For the year 1954 what was the total number
58 of qualified voters in Jefferson County? A. 18,887.

Q. And of that many how many were Negroes? A. 5,730.

Q. And how many were white? A. 13,157.

Q. For the year 1955 what was the total number of qualified voters? A. 19,452.

Q. Of that many how many—of that number how many were Negroes? A. 5,774.

Q. How many were white? A. 13,678.

Mr. Branton: No further questions Mr. Sheppard.

The Court: You may go.

Witness Excused.

Mr. Branton: At this time I would like to introduce into the record a certified statement as to the general characteristics of the population for Jefferson County, Arkansas, for the year 1950 as prepared by the Bureau of the Census of the Department of Commerce, and that said record will show that for the year 1950 the total population of Jefferson County, Arkansas was 76,075, classified as follows: native born white 37,792; foreign born white 360; Negroes 37,[illegible]5; other races 88. (Same is attached hereto, marked for identification Defendant's Exhibit No. 1 to Motion to Quash Jury Panel.) (see page no. .....)

59 M. V. MEAD, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. Will you state your name please? A. M. V. Mead.

Q. Where do you live Mr. Mead? A. Pine Bluff.

Q. How long have you lived in Jefferson County? A. 59 years.

Q. Do you hold any official public position in Jefferson County? A. Circuit Clerk.

Q. How long have you been the Circuit Clerk? A. About 12 or 13 years.

Q. Prior to that time did you work in any public capacity in the courthouse? A. Yes; I was County Judge for 2 years and I worked for some 5 or 6 years in the Sheriff's office as Chief Deputy. I did some special work for the Assessor.

Q. Mr. Mead, in your capacity as the Circuit Clerk state whether or not the panel selected by the jury commission is submitted by them to you? A. It is submitted to the Court.

Q. And filed with you? A. It is given to the Court and the Court in turn files it with me.

Q. State whether or not you have known the jury commissioners during the time you have held the office?

60 A. You mean personally known each panel of the jury commissioners.

Q. Have you known the men personally? A. I think I have known all of them.

Q. State whether or not to your knowledge a Negro has ever served on the Jury Commission in Jefferson County? A. Not that I remember.

Q. Do you maintain in your office a record as to the names of persons who have actually served on jury panels during the past 10 years? A. We keep a payroll record for them and consequently they are accredited with each day's service they do.

Q. Do you have that record with you? A. Not with me, no.

Q. Is the record available in your office? A. Yes.

Q. Mr. Mead, have you known personally most of the persons who have served on the various jury panels? A.

Well, back a good long time ago I think I did; now I don't, no sir.

Q. Would you make that record available for us? A. Yes sir, it is down there.

Q. I would like to use it in examining Mr. Albright. I believe that's all. A. You mean you want it now?

Q. Well, yes sir, I believe I do. Mr. Mead, state whether or not you have at my request obtained from your office a record pertaining to the payroll of the jurors who have served? A. Petit jurors, yes sir.

61 Q. What is the beginning date? A. I didn't know that you wanted any of that. I just brought you the current book—I thought you wanted to see how I keep the record.

Q. What is the beginning date of the record book you have there? A. 1947, October Term, Criminal Division.

Q. State whether or not that record reflects the names of persons who served on the criminal division of the jury panel? A. It does.

Q. Is that record kept in your office? A. This record, yes sir.

Q. Was that record compiled by you? A. By either myself or one of the deputies.

Q. In your office? A. Yes.

Q. To your knowledge does that record reflect a true statement as to the names of persons who have actually served on jury panels since the October Term, 1947? A. Yes.

Q. We want to introduce that record book into the record, subject, of course to the withdrawal by the Circuit Clerk.

The Court: He will have to be permitted to take it back until such time as Mr. May can copy it. (Copy of same is attached hereto, marked for identification Defendant's Exhibit No. 2 to his motion to quash jury panel. See page No. ....)

Mr. Branton: That's all.

Witness Excused.

62 HENRY ALBRIGHT, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name and occupation please? A. Henry Albright, Deputy Sheriff.

Q. You are a Deputy Sheriff of Jefferson County, Arkansas? A. Yes sir.

Q. Mr. Albright, how long have you served as Deputy Sheriff in this county? A. Oh, about 17 or 18 years.

Q. During that time has it been a part of your duties to summons jurors? A. I help.

Q. To the Court? A. I help, yes sir.

Q. State whether or not you have a fairly good knowledge or whether or not you have personally been acquainted with most of the persons who have served on the various jury panels—have you known them by sight? A. Some of them and some of them I don't.

Q. State whether or not there has ever been a Negro on the jury panel that you did not know? A. No, I don't think so.

Q. May I have the book Judge? Mr. Albright, I hand you here a payroll record from the Circuit Clerk's office which I hand you here beginning with the October Term of Circuit Court, Criminal Division, for the year 1947; will you read down the list of names of persons who
63 allegedly served on that particular panel for that particular year and pick out by name, if you can, those persons that you know to be Negroes?

The Court: Wait a minute, let me see that book Mr. Albright. Now, let me ask you, are you figuring on having him read this entire book?

Mr. Branton: I want him to look down each name Judge—I have done it and I have selected—I have gone through there and I have picked out the ones that are Negroes and set them up in my motion. I believe Mr. Albright is qualified by experience and by knowledge to look over those names for each jury panel since 1947 and select the names of those who were Negroes and would come within one or two persons of accurately telling you who was a Negro and who was not. I don't mean to have him read every name aloud.

The Court: You have got around 40 pages here. It occurs to the Court that you are attempting to delay this trial by going into matters here that could easily be determined another way. You can ask him about the number of Negroes who served, what he knows about it. Of course, the Court has no way of knowing whether he knows all of these names or not, but that is going to necessitate him stopping and thinking and looking and figuring and reading, it is going to take a good while going over here at this time and checking 40 pages of names.

Mr. Branton: That is the only way I know to prove it.

The Court: The Court thinks you are unduly delaying the procedure and I would like to know if you can't expedite matters some.

Mr. Branton: If the Court please, counsel for the defendant can expedite matters.

The Court: You say you have done this already, the Court would like to know why you haven't already had some witness who could testify to that without the necessity of delaying this trial at this time by doing this work. It occurs to me it is work that should have been done prior to this time. You say you have gone over it—do you not have someone who can testify as to the number?

64

Mr. Branton: No sir—I intended to prove it by Mr. Albright unless the Court will permit, with the consent of the Prosecuting Attorney to a stipulation that the record would show so and so.

The Court: Do you have the number?

Mr. Branton: Yes sir.

The Court: Why not show it by you?

Mr. Branton: Beginning with paragraph 5 of my motion through paragraph 22.

The Court: If you know them, (interrupted)

Mr. Branton: Sir?

The Court: You say you do know them? Did you say you knew them or didn't know them?

Mr. Branton: I know them.

The Court: Suppose you make the proof by you.

Mr. Branton: It is all right with me.

The Court: If you know.

Mr. Branton: Yes sir. I just want to make sure that the Prosecuting Attorney will agree if Mr. Albright looks through that record, that is the record as to the total number of Negroes who have served since the October Term, 1947, would agree with the record as set out in paragraph 5 through paragraph 22, I am sorry, paragraph 21, both inclusive, of my motion to quash.

Mr. Mullis: If the Court please, I have absolutely no knowledge of the particular facts and I could not so
65 stipulate. I can very well see why it might be prejudicial. I see no reason why he can't take the stand and make whatever proof he wants to make which is the basis for the allegations in those paragraphs he has mentioned.

The Court: The Court has serious doubts that Mr. Albright will be able to look over that list and tell you who they are. You say you have the figures?

Mr. Branton: Yes sir.

The Court: Do you want to testify as to them?

Mr. Branton: I would like to do it. I don't like to be put in the position of taking the stand, however, I am not objecting.

The Court: I don't see any objection to you taking the stand in this matter.

Mr. Branton: All right.

The Court: Have him sworn Mr. Mead.

Witness Excused.

66 WILEY A. BRANTON, a witness upon behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Branton:

The Court: You may state for the record what you find there.

Mr. Branton: My name is Wiley A. Branton. I am the defense attorney in the present case. I have been a practicing attorney within Pine Bluff, Arkansas, for a little better than 3 years. I was born in Pine Bluff 32 years ago. I have worked actively in political and civic problems

within Jefferson County, Arkansas, for the past 10 or 12 years and I am personally acquainted with a vast number of citizens within this county both white and colored. I have gone to the office of the Circuit Clerk within and for Jefferson County, Arkansas, and secured from him his payroll record book for jurors who have served on the criminal division of the jury panel for every term of court since the October, 1947, term of court up to and including the present term of court. I have looked over carefully each and every name of persons who have served on the various jury panels and I feel that I am qualified by knowledge to ascertain what persons were Negroes by name; that I have visited the various sessions of the court since the time I have been practicing law and my interest in law brought me into the court room on visits at practically every session prior to my active engagement in the practice of law and I remember from my own knowledge approximately how many Negroes have served on the various jury panels; that my search of the records in the Circuit Clerk's office reveals the following information to the best of my knowledge and
67 belief: that for the October 1947 Term the jury commission selected only 2 Negroes out of a total of 31 persons on the panel of petit jurors for the criminal division. For the March 1948 Term the jury commission selected no Negroes out of a total of 31 persons. For the October 1948 Term the jury commission selected 1 Negro out of a total of 38 persons. For the March 1949 Term the jury commission selected 2 Negroes out of a total of 24 persons. That of the 2 Negroes selected I am in doubt as to whether or not one of the said jurors in fact was a Negro, one bearing the name of Walter Johnson, for the record I concede that he may have been a Negro. For the October 1949 Term the jury commission selected 2 Negroes out of a total of 32 persons. For the March 1950 Term the jury commission selected 1 Negro out of a total of 64 persons. For the October 1950 Term of the Jefferson Circuit Court the jury commission selected no Negroes out of a total of 29 persons. For the March 1951 Term the jury commission selected 2 Negroes out of a total of 54 persons. For the October, 1951, Term the jury commission selected 1 Negro out of a total of 35 persons. For the

March 1952 Term the jury commission selected 2 Negroes out of a total of 31 persons. For the October 1952 Term the jury commission selected only 1 Negro out of a total of 27 persons on the regular panel and no Negroes on a special panel of 23 persons. For the March 1953 Term the jury commission selected 2 Negroes out of a total of 42 persons. For the October 1953 Term the jury commission selected 6 Negroes out of a total of 46 persons. For the March 1954 Term the jury commission selected 1 Negro out of a total of 25 persons. For the October 1954 Term the jury commission selected no Negroes
68 out of a total of 39 persons. For the March 1955 Term the jury commission selected 4 Negroes out of a total of 40 persons. For the October 1955 Term of, —this being the present term of court, the jury commission selected 2 Negroes out of a total of 58 persons on the panel, one of whom is now deceased and the other being, I believe, over the age of 65 years; as to the age I am not sure, but he is present to testify. That my search reveals further that only 23 different members of the Negro race have been selected for the jury panels by the jury commissions during the past 9 years. Of those I know personally I am of the opinion that more than half of them have been persons over 65 years of age. That's all.

The Court: You are testifying from the payroll that indicates that that is the number who have actually served on the jury. Do you know that the jury commission has selected many other colored people who at their request the court has excused and who did not serve?

Mr. Branton: Are you asking me that?

The Court: I am asking you if you know that.

Mr. Branton: All I know is that from time to time Negroes have been excused from jury service.

The Court: That their names don't show on this list because where they are excused they don't draw pay?

Mr. Branton: That may be true.

The Court: What is the purpose of this type of proof you are making?

Mr. Branton: The purpose is to show that Negroes have been discriminated against by arbitrary and unapportioned limiting of their number by the jury commissioners.

69 The Court: Do you know that during the past few years that there have been Negroes serving on the trial juries and that on several occasions they have sit on juries that actually tried white citizens of this county the same as any other juryman sat on there?

Mr. Branton: Yes sir, I am familiar with that fact.

The Court: Your testimony, however, about what the jury commission has selected, the number, this wouldn't be correct then would it—having in mind that many Negroes have been excused at their request?

Mr. Branton: I didn't testify to that.

The Court: Why, you used the term the jury commission selected so and so?

Mr. Branton: Well, based upon the record.

The Court: The payroll?

Mr. Branton: Yes, sir.

The Court: That is not the total record who the jury commissions selected.

Mr. Branton: I have no information as to any who may have been excused by the Court.

The Court: All right, okay.

Mr. Branton: Without getting it on the payroll record or serving at some time or another.

The Court: All right, go ahead, call your next witness.

Witness Excused.

70 IVY ANDERSON, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name please? A. Ivy Anderson.

Q. Where do you live? A. 3800 West 3rd.

Q. State whether or not you are a member of the Negro race? A. Yes.

Q. How long have you lived in Jefferson County? A. 39 years.

Q. To your knowledge have you ever known a Negro who served on the jury commission? A. How's that?

Q. State whether or not you have ever known a Negro who served on the jury commission? A. I don't think so. I can't remember.

Q. State whether or not you have ever been selected as a member of a jury panel? A. Yes sir.

Q. Do you know when you were first selected for jury service? A. 1948.

Q. In 1948. Prior to that time you had never served? A. No.

Q. As a juror? A. No sir.

Q. Do you know how many different terms of court
71 you have been selected since that time? A. Two.

Q. How old are you at the present time? A. 70.

Mr. Branton: Do you have any questions?

Cross Examination

By Mr. Mullis:

Q. Did you ever sit on the actual trial of a case? A. One.

Mr. Mullis: That's all.

Witness Excused.

72 BILL MILES, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to wit:

Direct Examination

By Mr. Branton:

Q. State your name and residence please? A. Bill Miles, 1427 West 23rd.

Q. What is your occupation Mr. Miles? A. City Editor for the Pine Bluff Commercial.

Q. How long have you held that position? A. 4 years.

Q. Did you work for the Pine Bluff Commercial prior to assuming that position? A. Yes sir.

Q. State whether or not you maintain bound volumes of newspapers which are published by your company? A. We try to.

Q. Do you have with you in the courtroom today the bound volume for March, 1947? A. Yes sir.

Q. Will you get that record please?

The Court: Just what is this? What is the purpose of this?

Mr. Branton: The purpose is to introduce testimony by Mr. Miles to the effect that the bound volume of the Pine Bluff Commercial for March of 1947 will show the newspaper reports that in the case of State of Arkansas versus Albert Wilkerson and Willie Wilkerson a motion was filed in that case to quash the then jury panel on the ground that there had been a systematic exclusion of Negroes from jury service for more than 40 or 50 years within this county, and that the motion was sustained by the
73 then circuit judge and the panel was quashed.

The Court: Wouldn't the records be the best evidence of that?

Mr. Branton: The records of the case itself?

The Court: Whatever the records there are in the case —I never heard of a newspaper being a record.

Mr. Mullis: The state objects first, in the first place it is not the best evidence of the actual procedure, and in the second place, that Mr. Miles was not,—has not been shown that Mr. Miles was a member of the staff of the paper at the time.

Mr. Branton: The defendant asks for a ruling on the objection.

The Court: The objection will be sustained.

Mr. Branton: Note the objection of the defendant and save our exceptions.

Witness Excused.

74 C.P. COLEMAN, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name please? A. C. P. Coleman.

Q. Where do you live? A. 1901 West 10th, Pine Bluff.

Q. What is your present occupation? A. Well, I am a retired teacher now—sitting down I guess.

Q. What is your present age? A. 72.

Q. How long have you lived in Jefferson County? A. 46 years.

Q. For the record, you are a member of the Negro race? A. Yes, sir.

Q. To your knowledge has a Negro ever served on the jury commission in Jefferson County? A. Who? Myself?

Q. To your knowledge has a Negro ever served on the jury commission—I am not talking about the panel. A. No sir, not that I know of.

Q. Have you sir ever served on the jury panel? A. Yes sir—the petit jury you mean?

Q. Yes. A. I have.

75 Q. Do you know when you were first called for jury service? A. Oh, it has been five or six years ago.

Q. Prior to that time had you ever been called for jury service? A. I had not.

Q. Do you know how many different terms of court you have been called for jury service? A. I think about 3 or 4, something like that—I never kept count of them—3 or 4, something like that.

Mr. Branton: I believe that's all.

Direct Examination

By Mr. Mullis:

Q. You said you were a retired school teacher? A. Yes sir.

Q. Have you actually sat on the jury in the trial of cases professor? A. Yes sir.

Mr. Mullis: That's all.

The Court: Anything further?

Mr. Branton: That's all.

Witness Excused.

76 A. C. CREGGITT, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name please? A. A. C. Cregitt.

Q. Where do you live Mr. Gregitt? A. Altheimer.

Q. How old a man are you sir? A. 63.

Q. How long have you lived in Jefferson County? A. 63 years.

Q. For the record, you are a member of the Negro race? A. I am.

Q. To your knowledge have you ever known a Negro to serve on the jury commission in Jefferson County? A. On the jury commission?

Q. Yes sir, the body that selects the persons who will serve on the jury panel? A. Say, explain that to me—say what you are talking about.

Q. Have you ever known a Negro who has served on the jury commission? That is the body of folks who select the juries who will actually serve on the jury panel. A. No sir, I wouldn't know any.

Q. Have you ever been called for jury duty? A. I have.

77 Q. Do you recall the first time you were ever called for jury duty? A. Along about 4 years ago.

Q. Prior to that time you had never been called for jury service? A. Never had.

Q. Since you were first called have you been called for any other term of court? A. I have.

Q. Do you know how many different times you have been called for jury duty? A. Twice.

Q. I am not talking about different cases, but different terms of court? A. Twice.

Mr. Branton: Your witness Mr. Mullis.

Cross Examination

By Mr. Mullis:

Q. What do you do, are you a farmer? A. Farmer.

Q. Have you ever served on a jury that actually tried a case? A. Yes, sir.

Mr. Mullis: That's all.

Witness Excused.

78 C. C. NEAL, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

Q. State your name? A. Neal, C. C.

Q. Where do you live? A. Route 10, Box 495.

Q. Is that within Jefferson County? A. Yes sir.

Q. How long have you lived in Jefferson County? A. 44 years.

Q. For the record you are a member of the Negro race, is that correct? A. I guess I look like it, yes sir.

Q. To your knowledge have you ever known of a Negro to serve as a member of the jury commission? A. What is the jury commission?

Q. The commission is the body that selects the persons who will serve on the jury panel. A. I have not.

Q. Have you ever been called for jury service in this county? A. I have.

Q. When was the first time you were ever called for jury service? A. When was the first time I was ever called for jury service?

Q. Yes, sir, the approximate year? A. Well, I think it was about 3 or 4 years ago.

Q. Have you been called for jury service during more than one term of court? A. No sir.

79 Q. What is your present age? A. I am 80, going into 81st.

Mr. Branton: Your witness.

Cross Examination

By Mr. Mullis:

Q. What is your profession? A. Me?

Q. Yes. A. I am a school teacher and preacher.

Q. School teacher and preacher? A. Yes sir.

Q. When you were called for jury service did you actually sit on a case or jury that tried a case? A. Yes sir.

Mr. Mullis: That's all.

Witness Excused.

80 GABE MAZIQUE, a witness upon behalf of the defendant, having been first duly sworn, testified as follows to-wit:

Direct Examination

By Mr. Branton:

Q. State your name please? A. Gabe Maziek.
Q. Where do you live? A. Pastoria.
Q. In Jefferson County? A. In Jefferson County.
Q. For the record, you are a member of the Negro Race? A. I am.
Q. How old are you? A. 70.
Q. How long have you lived in Jefferson County? A. All my days.
Q. Have you ever been called for jury service in this county? A. I have.
Q. Do you recall the first year you were ever called for jury service? A. I can't recall just the first year, just once.
Q. Do you know approximately how long ago it was? A. Approximately about 3 years I believe, or 2 years ago.
Q. Have you ever been called for more than one term? A. No sir.
Q. How long have you lived in Jefferson County? A. 70 years, excusing a few years I was out somewhere I lived here all my days practically.
Mr. Branton: Your witness.

81 Cross Examination

By Mr. Mullis:

Q. What is your occupation? A. Farming.
Q. Have you ever served on a jury that actually tried a case? A. Tried a case?
Q. Yes. A. Yes sir.
Mr. Mullis: That's all.
The Court: You operate a rather large farm? A. Yes sir.
The Court: You have been operating it sometime? A. Yes sir.
The Court: You are considered a rather prominent citizen? A. Sir?
The Court: You are considered a rather prominent citizen? A. Yes.
The Court: You have a brother who is a practicing physician here in Pine Bluff? A. Yes sir.

The Court: That's all.

Witness Excused.

82 M. L. BRANTLEY, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name please? A. M. L. Brantley.
Q. Where do you live? A. 1,001 Blake.
Q. Is that here in Pine Bluff? A. Here in the city.
Q. How long have you lived in Jefferson County? A. 16 or 17 years, something like that. I have been here since 1904 off and on.
Q. What is your present occupation? A. Teacher and minister.
Q. What is your present age? A. 67.
Q. Have you ever been called for jury service? A. I have.
Q. When were you first called for jury service? A. About 3 years ago.
Q. Have you been called during more than one term of court? A. I have not.
Q. Have you ever actually sat on a case? A. I have.
Mr. Mullis: No questions.
Mr. Branton: You are excused Mr. Brantley, you may go.

Witness Excused.

83 R. N. CHANEY, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name please? A. R. N. Chaney.
Q. Where do you live? A. 2602 West Pullen.
Q. Here in Pine Bluff? A. Yes sir.
Q. How long have you resided in Jefferson County? A. 44 years.

Q. What is your present occupation? A. My present occupation is Principal emeritus of Merrill High School and Minister of the St. Paul Church, Religious Educational Director.

Q. Did you state how long you have lived in Jefferson County? A. It will be 45 years next September.

Q. During most of that time you were Principal and teacher in the Merrill High School? A. Assistant Principal and Principal.

Q. What is your present age sir? A. Beyond 65.

Q. Would you care to say how far beyond? A. Not far, about 67.

Q. To your knowledge have you ever known of a Negro to serve on the jury commission in Jefferson County
84 within your lifetime? A. No sir.

Q. Have you ever been called for jury service? A. Yes sir.

Q. Do you know when you were first called for jury service? A. It has been 15 years ago—it was in Judge Parham's day.

Q. Do you recall the case? A. The Wilkerson case.

Q. The Wilkerson case? A. Yes sir.

Q. Prior to that time to your knowledge had any Negro ever served on jury duty in this county? A. I don't recall—I don't remember that they had—I am sure they hadn't.

Q. Do you know how many different terms of court you have been called for jury service? A. 4.

Q. Have you ever actually sat on a case, sat on a jury that tried a case? A. Yes, sir.

Mr. Branton: Your witness.

Cross Examination

By Mr. Mullis:

Q. Professor you have been recognized for a num-
85 ber of years as one of the outstanding citizens in Jefferson County haven't you? I mean you have had public recognition of that fact? A. Yes sir.

Mr. Mullis: That's all.

Mr. Branton: That's all.

Witness Excused.

86 S. A. HALEY, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State you name please? A. S. A. Haley.
Q. Where do you live Mr. Haley? A. A. M. & N. College.
Q. What is your occupation? A. Agricultural Director.
Q. How long have you lived in Jefferson County? A. 16 years.
Q. What is your present age? A. 63.
Q. Have you ever been called for jury service in Jefferson County? A. I have.
Q. How long ago was it that you were first called for jury service in Jefferson County? A. Well, 5 years I think.
Q. Have you been called for jury service during more than one term of court? A. No.
Q. Did you ever actually sit on a case? A. I did.
Mr. Branton: Your witness.

87 Cross Examination

By Mr. Mullis:

Q. You are a professor at the A. M. & N. College? A. Yes sir.
Mr. Mullis: That's all.

Witness Excused.

88 JOSIAH WALKER, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name please? A. Josiah Walker.
Q. Where do you live? A. I live out on Route 2, Altheimer.
Q. How long have you lived in Jefferson County? A. Well, all my life save what little time I put up in the army, 6 months when I was 17 years old I run away from home.

Q. How old are you? A. If I live to see the 23rd day of next month I will be 61 years old.

Q. For the record here, you are a member of the Negro Race are you not? A. So far as I know I am.

Q. Have you ever been called for jury service A. I have.

Q. When was the first time you were called for jury service, about what year? A. Oh, I can't recall what year, the first year I was called for the service in this courthouse I believe was after,—if my memory serves me right about 3 years ago.

Q. Have you been called for jury service more than one term of court? A. I have.

Q. Have you ever actually sat on a jury trying
89 a case? A. I have.

Q. You are also a member of the board of directors of the Wabbaseka School District? A. I am.

Mr. Branton: Your witness.

Cross Examination

By Mr. Mullis:

Q. You said here at the courthouse—did you ever serve on a jury anywhere else? A. Well, I used to serve on juries when I was a young man out in justice court there. I remember serving on the jury on a coroner's jury.

Q. When you were a young fellow? A. Yes sir.

Mr. Mullis: That's all.

Mr. Branton: That's all.

Witness Excused.

90 M. V. MEAD, a witness upon behalf of the defendant, Recalled.

Further Direct Examination

By Mr. Branton:

The Court: What do you want to put in the record?

Mr. Branton: I want to put the copy of the motion to quash the jury panel and I want to put the order of the court in that case (State v. Wilkerson) in the record and incorporate it as part of our proof.

The Court: How could the making of a motion at that time be any proof of anything?

Mr. Branton: Well, before that motion was filed to quash the then panel on the grounds that Negroes were completely excluded, (interrupted)

The Court: Those are the allegations.

Mr. Branton: Yes, sir, but proof was offered and the motion was granted and that since that was the beginning of Negroes on jury duty in this county for the first time in modern history I have offered proof to show what has happened since that time.

The Court: What all is it you want out of there in the record?

Mr. Branton: I want the motion to quash the panel made part of the record, and also, I want the order granting the motion, and I ask leave of the court to have the clerk get the latter and turn it over to the reporter to put in the record.

The Court: Do you gentlemen have any objection to that?

Mr. Mullis: I don't believe so, Your Honor.

The Court: Okay, let him put it in then. I don't think this has any business in the record but you can put
91 it in if you want to.

Mr. Mullis: I don't believe I object to it.

The Court: If you don't object to it I will let it go in there.

All right, if you want to introduce it introduce it.

Q. (Mr. Branton, continuing) Your name is Mr. M. V. Mead? A. Yes.

Q. You are the same Mr. M. V. Mead that just testified here as the Circuit Clerk? A. That's right.

Q. Sir, do you have with you the record of the criminal case No. 18758, Jefferson Circuit Court, styled State of Arkansas versus Albert Wilkerson and Willie Wilkerson? A. Yes sir.

Q. State whether or not that record contains a motion to quash the panel of petit jurors because of the systematic exclusion of Negroes from Juries? A. I don't know the contents of that motion.

Q. State whether or not there was a motion filed to quash the panel of petit jurors? A. There was.

Q. Do you have that motion here? A. Yes sir.

Q. The defendant introduces the motion into the record. (Copy of same is attached hereto, marked for identification Defendant's Exhibit No. 3 on Motion to Quash. See page No. .)

Mr. Branton: Let the record show that the docket entry pertaining to the Court's action with reference to the motion just introduced may be incorporated into the record. (Copy of same is attached hereto, marked
92 for identification Defendant's Exhibit No. 4 on Motion to Quash jury panel. See page No. .)

Witness Excused.

Mr. Branton: That completes defendant's proof, Your Honor, and defendant moves at this time that the motion be granted.

Overruling of Motion to Quash Panel of Petit Jurors

The Court: The motion will be overruled.

Mr. Branton: Note the objection of the defendant and save our exceptions.

94 **Defendant's Exhibit No. 3, Upon Motion to Quash Jury Panel**

Filed in Open Court March 27, 1947

IN THE JEFFERSON COUNTY CIRCUIT COURT

No. 18758

THE STATE OF ARKANSAS

vs.

ALBERT WILKERSON AND WILLIE WILKERSON

MOTION TO QUASH PANEL OF PETIT JURORS

To the Honorable T. G. PARHAM, Judge of the
Jefferson County Circuit Court for the
Eleventh Judicial District of the
State of Arkansas:

Come the defendants, Albert Wilkerson and Willie Wilkerson, both of them being Negroes, in their own proper

person into Court, and through their attorney, W. Harold Flowers, move the Court for an order quashing the panel of veniremen summoned hereto by the Sheriff from which panel the Petit Jury, when and as qualified, will be selected to try the issues between the said defendants and the State of Arkansas upon their plea of not guilty to an information filed by the Prosecuting Attorney of the Eleventh Judicial District of the State of Arkansas in the Jefferson County Circuit Court, March Term, 1947, wherein they, the said defendants were charged with murder in the first degree.

FIRST—That on or about the 24th day of February, 1947, the Judge of the Circuit Court of Jefferson County drew or caused to be drawn from the Jury box or Jury list, a number of names to constitute the regular panel of Petit Jurors for the March Term of the Circuit Court of Jefferson County and that thereafter on or about the 24th day of February, 1947, said list of names was delivered to the Clerk of the Circuit Court, who thereupon made a fair copy of the list of names and delivered it to the
95 Sheriff of Jefferson County, on or before March 3, 1947; and the said Sheriff summoned the persons named in said list to attend the Jefferson County Circuit Court at its regular term, to-wit on the 3rd day of March, 1947, which the said Sheriff has done according to law.

SECOND—That the Judge of the Jefferson County Circuit Court appointed three jury commissioners, and that all of the persons whose names were drawn were presented to the Court by the said three jury commissioners from the qualified electors of Jefferson County; and that all of the persons whose names were drawn by the said jury commissioners or caused to be drawn by the said Judge, and whose names were given to the Sheriff and who were summoned by the Sheriff are white persons and defendants are informed and believe, and therefore aver that all of the persons whose names are on the jury list or in the jury box in the Jefferson Circuit Court from which list or box other jurors will be drawn are white persons.

THIRD—That in Jefferson County, Arkansas, long prior to the selecting of names for the current jury list or jury

box and at all times since, there had been, were, and still are numerous colored citizens of the State of Arkansas and residents of said County who in every respect had been, were and still are qualified to serve as Petit Jurors in civil and criminal trials in said County, including trials of felonies. Nevertheless, the jury commissioners or other public officials in selecting the jury from time to time unlawfully and in violation of their respective oaths of office and of the Constitution of the State of Arkansas and that of the United States of America, and the law of the land, did exclude and always excluded from jury service all qualified Negroes, members of the colored race and of African descent solely on account of their color and race.

96 FOURTH—That at all times material herein it has been, was and still is the custom in said Jefferson County to use white persons exclusively for Petit Jury service in any and all cases, including trials of felonies, and in selecting the current jury and the supplement or supplements thereto the jury commissioners followed said customs and excluded qualified Negroes from the panel and supplement or supplements solely on account of color and race.

FIFTH—That by law the Judge or jury commissioners in causing to be drawn or in drawing the names of the jurors which were to constitute the Jury from the jury box and the Clerk in delivering the list to the Sheriff to summon the veniremen were restricted to the names placed in the Jury box or on the jury list by the jury commissioners and the supplement or supplements thereto; and by reason of the unlawful exclusion by said jury commissioners of all qualified Negroes from said jury list or jury box and all supplement or supplements thereto, there could not be and are not any Negroes on the panel summoned by the Sheriff and so far as the trial jurors may be selected from said panel or said jury list or jury box or the supplement or supplements thereto, all qualified Negroes have been and are unlawfully excluded from the possibility of sitting as jurors on the trial of the issues raised on the indictment herein solely by reason of their color and race.

SIXTH—That in Jefferson County, Arkansas, long prior to the selection of the present panel, and at all times since,

there had been, was, and still is a common understanding or method by which some person or persons authorized to or usurping authority to select the jury panel for the Criminal Court, has or have so unlawfully manipulated the jury list or has or have so by such secret and un-
97 lawful methods manipulated, managed and controlled the selection, call, and qualifications of jurors as to unlawfully exclude all Negroes from serving as jurors in Jefferson County Arkansas, for approximately a half century so that for more than forty years and up to the present all persons or persons permitted to serve on the jury are white persons.

Seventh—That in order to circumvent recent decisions of the United States Supreme Court reversing convictions in cases in which discrimination as is herein shown has been practiced a conspiracy, common understanding or method has been developed by which one or two Negroes are called whenever it appears that the unlawful method of excluding Negroes will be challenged. This however is not in good faith as no Negroes are ever used on any Grand or Petit jury and as a result thereof all Negroes in Jefferson County, Arkansas have been denied their constitutional right of trial by a jury of their peers.

Eighth—That the total population of Jefferson County, Arkansas, as of April 1, 1940, according to the Sixteenth Census second series is 65,101; divided as to the races as follows: white, 29,079 and Negro, 35,980. That the Negro population is more than fifty percent of the total population. That the total number of legal electors eligible for consideration as jurors is 11-340. That the total number of legal electors in Jefferson County 3,000 are members of the Negro race.

Wherefore, the petitioners further state that while white electors are regularly elected to serve as Petit Jurors at each term of the Jefferson County Circuit Court, no Negroes have been selected and that said Negro electors have been systematically excluded from serving as Petit Jurors in said Jefferson County Circuit Court for almost a half a century solely because they are Negroes, which con-
98 stitutes a discrimination against those defendants who are Negroes and such discrimination is a denial

to them of equal protection of the laws of the United States as guaranteed by Section One of the Fourteenth Amendment to the Constitution of the United States of America. Petitioners further allege that due process of law is being denied them by the State of Arkansas, through its Administrative Officers, and pray that the present Petit Jury Panel be quashed.

/s/ W. Harold Flowers
W. Harold Flowers
Attorney for Defendants

Albert Wilkerson and Willie Wilkerson, petitioners herein, on oath state that they have read over the foregoing allegations in this petition, and that they are true to their best knowledge and belief.

/s/ Albert Wilkerson
/s /Willie Wilkerson
Defendants

Subscribed and sworn to before me, a Notary Public, on this 26th day of March, 1947.

/s/ Daniel W. Young
Notary Public

My Commission Expires:
Nov. 9, 1948.

Seal

99 **Defendant's Exhibit No. 4. to the Motion to Quash the Jury Panel**

3/27/47 Motion to quash panel filed. Motion granted & panel quashed. Clerk directed to give Sheriff a venire for thirty four (34) qualified jurors, to appear at nine o'clock on Monday, March 31, 1947. Exceptions. Case reset for trial for Monday, March 31, 1947, at 9 o'clock.

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100 IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

No. 22551

STATE OF ARKANSAS,

Vs.

FRANK ANDREW PAYNE

Minute Order Denying Motion to Quash, Waiver of Arraignment and Plea of Not Guilty—Jan. 10, 1956

Now on this day comes the State of Arkansas, by Pat H. Mullis, Prosecuting Attorney and Reinberger & Eilbott, and comes the defendant in proper person and in custody of the Sheriff and by his attorney Wiley A. Branton.

WHEREUPON, defendant's attorney, Wiley A. Branton, files a motion to Quash Panel of Petit Jurors, and after hearing said motion, testimony of witnesses, argument of counsel, said motion is denied, to which ruling of the Court defendant excepts and asks that his exceptions be noted of record, which is hereby accordingly done.

The defendant waiving arraignment on the information herein for the crime of Murder In The First Degree, pleads not guilty.

WHEREUPON, a jury composed of A. Garland Swepston and eleven other good and lawful jurors is duly empaneled and sworn to try this case as provided by law, and the time for adjournment having arrived, it is ordered by the Court that the trial of this case be continued until Wednesday, January 11th, 1956..

* * * * * * * * * * *

102 IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

(Title Omitted)

Motion for New Trial—Filed January 23, 1956

COMES THE DEFENDANT, Frank Andrew Payne, in person, in the proper custody of the Sheriff of Jefferson County, and by his attorney, Wiley A. Branton, and moves the Court to set aside the verdict of the jury herein, and for cause therefor, states:

1. Because the verdict of the jury is contrary to the evidence.

2. Because the verdict of the jury is contrary to the law.

3. Because the verdict of the jury is contrary to both the law and the evidence.

4. Because the verdict of the jury is excessive.

5. Because the Court erred in over ruling the defendant's motion for a continuance which was filed on January 9th, 1956.

6. Because the Court erred in overruling defendant's motion to quash the information; to which action of the Court the defendant saved his proper exceptions.

7. Because the Court erred in overruling defendant's motion to quash the jury panel; to which action of the Court the defendant saved his proper exceptions.

8. Because the Court erred in failing and refusing to permit the defendant to introduce testimony upon his motion to quash the jury panel by witness Bill Miles as to a newspaper article in the Pine Bluff Commercial that a motion to quash the jury panel had been filed in the case of State of Arkansas Vs. Albert Wilkerson and
103 Willie Wilkerson and that said motion had been granted.

9. Because the Court erred in using any of the names on the panel from the special panel because the special panel should not have been opened until the names on the regular panel had been exhausted.

10. Because the Court erred in permitting the witness Dr. Frank Reed, Coroner of Jefferson County, to show to the jury five 35 mm colored pictures, four of said pictures being of the deceased and one of the location of the crime, over the objections and exceptions of the defendant.

11. Because the Court erred in permitting the jurors to separate and in not keeping the jurors together in a body during the trial of this cause.

12. Because the Court erred in overruling defendant's motion for a mistrial on the grounds that the colored pictures exhibited to the jury by Dr. Frank Reed were prejudicial to the jury.

13. Because the Court erred in permitting the prosecuting attorney to introduce into evidence the alleged confession of the defendant and to have same read to the jury, over the objections and exceptions of the defendant.

14. Because the Court erred in permitting the prosecuting attorney to ask the witness Buck Halsell the following question:

> Q. Sergeant Halsell, I believe you stated that you were active in the investigation of the murder of J. N. Robertson?
>
> A. That's right.

15. Because the Court erred in permitting the witness Buck Halsell to relate to the jury what the defendant did and said when the defendant reinacted the crime in the presence of witness, over the objections and exceptions of defendant.

104 16. Because the Court erred in permitting the witness Buck Halsell to relate to the jury what the defendant did and said at 805 Birch Street immediately after the witness and defendant returned to Pine Bluff from Dumas, over the objections and exceptions of the defendant.

17. Because the Court erred in permitting the prosecuting attorney to offer in evidence by the witness Sgt. Buck Halsell, certain articles of clothing allegedly worn by the defendant and the deceased, over the objections and exceptions of the defendant.

18. Because the Court erred in denying defendant's request for a mistrial on account of the introduction of certain articles of clothing allegedly worn by the defendant and the deceased.

19. Because the Court erred in permitting the witness Bobbie Jones to testify at all in the trial for the reason that the said Bobbie Jones was present in the courtroom near the attorneys and court when counsel for the defendant was making a motion for the record after the jury had been recessed for the day.

20. Because the Court erred in permitting the prosecuting attorney to introduce in evidence by the witness Sam Bradley an iron bar, allegedly the murder weapon, over the objections and exceptions of the defendant.

21. Because the Court erred in denying defendant's motion for a directed verdict of not guilty of first degree murder, at the conclusion of the State's case.

22. Because the Court erred in denying defendant's motion for a directed verdict of not guilty of second degree murder, at the conclusion of the State's case.

105 23. Because the Court erred in denying defendant's motion for a directed verdict of not guilty of voluntary manslaughter, at the conclusion of the State's case.

24. Because the Court erred in denying defendant's request made at a quarter to five in the afternoon that the Court recess until the following morning at nine o'clock before the defendant put on his proof or evidence.

25. Because the Court erred in permitting the jury to separate for the night after the evidence on both sides was concluded, over the objections and exceptions of the defendant.

26. Because the Court erred in denying defendant's request for a directed verdict of not guilty at the conclusion of all the testimony.

27. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 1.

28. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 2.

29. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 3.

30. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 4.

31. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 5.

32. Because the Court erred in giving to the jury of the Court's own motion wri. en instruction No. 6.

33. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 7.

34. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 8.

106 35. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 9.

36. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 10.

37. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 11.

38. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 12.

39. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 13.

40. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 14.

41. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 15.

42. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 16.

43. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 17.

44. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 18.

45. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 19.

46. Because the Court erred in giving to the jury of the Court's own motion written instruction No. 20.

47. Because the Court erred in failing and refusing to give to the jury defendant's written requested instruction No. D-9.

48. Because the Court erred in failing and refusing to give to the jury defendant's written requested instruction No. D-10.

107 49. Because the Court erred in failing and refusing to give to the jury defendant's written requested instruction No. D-11.

50. Because the Court erred in denying defendant's request for a mistrial at the conclusion of the closing argument of the Special Prosecuting Attorney for the reason that the defendant was being denied the right to a public trial, in that members of the defendant's race were denied admittance to the Courtroom as spectators because of their being no more seats in the segregated side to which Negroes had been directed, while there were seats available on the other side of the Courtroom which was reserved for white persons; to which action of the Court, the defendant saved his proper exceptions.

WHEREFORE, premises considered, defendant prays that the verdict of the jury herein be set aside and that he be granted a new trial of this cause.

/s/ FRANK PAYNE
Frank Andrew Payne

/s/ WILEY A. BRANTON
His Attorney

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108 IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

Motion for New Trial Overruled—Sentence—Jan. 23, 1956

On this day the defendant is brought into court, and it appears that he has been duly and legally tried by a jury, found guilty of the crime of Murder In The First

Degree as charged in the Information, and his punishment fixed at death by electrocution.

The defendant is informed by the Court of the nature of the crime, Information, plea and verdict, and upon being asked by the Court if he had any legal reason why judgment should not be pronounced against him in accordance with the verdict of the jury, none is shown.

It is therefore considered, ordered and adjudged by the Court that said defendant be remanded into the custody of the Sheriff of Jefferson County, and to be by him safely and speedily delivered to the Keeper of the State Penitentiary, where he will be safely kept until the 13th day of April, 1956, on which day, between sunrise and sunset, said defendant shall be executed by causing to pass through the body of the said Frank Andrew Payne a current of electricity of sufficient intensity to cause death.

It is further ordered by the Court that the Clerk of this Court make out and deliver to said Sheriff a certified copy of the foregoing judgment to be by him delivered to the Keeper of said Penitentiary as sufficient authority for him to receive and keep, awaiting execution, the said Frank Andrew Payne in the manner aforesaid.

Motion for new trial filed and overruled, exceptions. Appeal prayed and denied, bond denied, and defendant allowed sixty days to file bill of exceptions.

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109 IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

No. 22551 Murder in the First Degree

STATE OF ARKANSAS, *Plaintiff*

V.

FRANK ANDREW PAYNE, *Defendant*

Bill of Exceptions—filed March 21, 1956

BE IT REMEMBERED, That on the 10th day of January, 1956, being a day of the October Term, 1955, of the Jefferson Circuit Court, before the Honorable Henry W. Smith, the regular Judge thereof, and a jury, the above entitled cause came on for trial, and in the course thereof evidence

was introduced, objections made, exceptions taken, and other proceedings had, which are as follows, to-wit:

APPEARANCES

PAT H. MULLIS, and R. A. EILBOTT, JR., for Plaintiff
WILEY A. BRANTON, for Defendant

(File Endorsement Omitted)

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110 The Court: All right gentlemen, the State versus Frank Andrew Payne. What says the State?

Mr. Mullis: The State is ready.

The Court: What says the defendant?

Mr. Branton: The defendant is ready for trial; arraignment waived and a plea of not guilty.

(The Court, Counsel and Defendant retire to private chambers out of the presence and hearing of the Jury, where the following proceedings were had, as follows, to-wit)

Colloquy Re Impanelling of Jury

Mr. Branton: Judge, Section 43-1903. I am requesting that the jury be drawn from the jury box.

Mr. Reinberger: What do you want, a drawn jury Wiley?

Mr. Branton: Yes sir, I want a drawn jury, either a panel of 24 or 36.

(The Court and Counsel and Defendant return to the Courtroom in the presence of the Jury, but not in the hearing of the Jury, where the following proceedings were had, to-wit)

The Court: Let the record show that the attorney for defendant demands a drawn jury of either from a list of 24 or 36; that the original jury of 36, that from the original jury of 36 many have been excused and that the court is now fixing the jury of 36 composed of the remaining of the original 36 and sufficient jurors drawn from the special list to make up the 36.

Mr. Branton: Let the record also show that the defendant objects to the use of any names on the panel from the special panel on the ground that it should not have been

opened until after the exhaustion of all names on the original panel, and further, it should have been opened in open court and the names placed in the box.

The Court: Let the record show that the special list has been heretofore opened and qualified.

* * * * * * * * * * *

167 Jury Excused.

TESTIMONY OF BUCK HALSELL

Re Direct Examination

By Mr. Mullis:

168 Q. Sergeant Halsell, during your investigation of this case with the officers in Pine Bluff did the defendant make any statement to you? A. He did.

Q. State whether or not he was promised any regard or any immunity or whether there were any threats made or any undue methods to get him to make this statement? A. Not to my knowledge and certainly not in my presence.

Q. Did he make a statement to you? A. He did.

Q. Was that statement reduced to writing? A. It was.

Q. In his presence. Was it reduced to writing—was it signed by him? A. It was.

Q. Did he read it or was it read to him? A. He read it.

Q. Did he sign the statement? A. He did.

Q. Did he sign each separate page of the statement? A. He did.

Q. Were there any changes in the statement as he read it? A. There were.

Q. Did he initial each one of those changes? A. He did.

Q. Do you have that statement with you? A. I do.

Mr. Mullis: If the court please, we would like to introduce that statement at this time.

Mr. Branton: The defendant will object. I am
169 going into the question that it wasn't voluntarily obtained and I am going to offer proof on it.

The Court: You haven't cross examined him. Do you want to ask him any questions?

Mr. Branton: Oh, yes sir, I am going to ask him some questions. I want to cross examine him.

Mr. Mullis: Go right ahead.

Re Cross Examination

By Mr. Branton:

Q. Sergeant Halsell, when was this alleged confession taken? A. It was taken on October 7, 1955.

Q. How how long after the alleged killing was that? A. The last killing?

The Court: What was that date? A. October 7, 1955.

Q. What was the date of the death of the deceased? A. I believe it was October 4th.

Q. Do you recall the day of the week? A. Offhand I don't, October 4, 1955 was the day of the killing.

Q. Do you remember whether or not the defendant was in the custody of the police when he made the confession? A. He was.

170 Q. Where was the confession made? A. In the office of Mr. Young, the Chief of Police.

Q. How many people were present when the confession was made? A. You want them by number or by name?

Q. If you know by name, yes sir, I certainly would like to know. A. The defendant, Norman Young, Harold Norton, Bill Miles, Geleve Grice, Pat Mullis, and Mrs. Duensing.

Q. Duensing? A. Duensing.

Q. About what time of the day was it Sergeant Halsell? A. It was in the neighborhood of 2:00 o'clock.

Q. Just prior, (interrupted)

The Court: Just a minute—A. M. or P. M.?

A. P. M. sir.

Q. Just prior to the confession how long had it been since you had seen the defendant? A. I believe I saw him at,—it was after 1 o'clock and then I was out of the office a couple of times for just a minute or so.

Q. Shortly after 1:00 o'clock did you know then he was going to confess? A. He indicated that he wanted to make a statement.

Q. Did he make that indication known to you? A. He did.

Q. Just prior to the confession which was reported by a stenographer, do you know whether or not he had already made an oral confession to anyone else? A. He didn't make any to me.

Q. Do you know whether or not he made one to
171 Chief Young? A. I didn't sit in on it.

Q. When you arrived at Chief Young's office when the confession was made was there anybody already in Chief Young's office when you arrived? A. The only people that were in Chief Young's office when I arrived was the defendant and Chief Young the best that I remember.

Q. Who was with you when you first went there? A. I believe the Sheriff, Harold Norton.

Q. Do you recall whether a conversation took place there at the door of the Chief's office before you went in between you and the Chief or the Sheriff and the Chief? A. I don't believe between the Chief and I—I couldn't say between the Chief and the Sheriff—if there did I didn't hear it.

Q. State whether or not you recall hearing Chief Young saying he had promised the boy he could make a confession to him privately first? A. I don't remember the Chief having told me that.

Q. Did the Chief tell you that the boy was ready to make a confession? A. I believe he made some statement to that effect.

Q. What did you do then? A. I asked him if he was ready to make a statement and he said he was.

Q. Did he make the statement immediately? A. No he didn't.

Q. What happened? A. Well, I asked for some witnesses.

172 Q. How long did it take to get the witnesses? A. Not too long.

Q. Did you call in a reporter and stenographer? A. I asked for some disinterested parties to witness—I called for a stenographer—I asked for a stenographer to take the statement.

Q. Was there any recording made by voice? A. You mean wire recording?

Q. Yes. A. There was not to my knowledge.

Q. How was the confession transcribed or taken down? A. In shorthand.

Q. By whom? A. By Mrs. Duensing.

Q. Did Mrs. Duensing transcribe her notes there in the office? A. She did not.

Q. Were you present when the defendant made the statement in the presence of Mrs. Duensing? A. I was.

Q. Do you read shorthand sir? A. No sir, I do not.

Q. Did Mrs. Duensing or anybody else, subsequently reduce the transcribed shorthand notes to writing? A. Mrs. Duensing, to my knowledge Mrs. Duensing is the one that transcribed it.

Q. How much later after the alleged confession? A. I will say in the neighborhood of 3:00 o'clock when I received the statement.

173 Q. Well, what time was it when she took it? A. She started at approximately 2:00 o'clock.

Q. She started taking his testimony at 2:00 o'clock? A. Approximately 2:00 o'clock—I didn't have a watch.

Q. Do you know where she went to type it up? A. I do not.

Q. Did you make a copy of everything that was being said? A. Did I make a copy?

Q. Yes sir. A. I did not.

Q. Now the statement that was brought back to you, can you testify to your own knowledge that the statement given to you by Mrs. Duensing is exactly word for word the same thing that this defendant testified to? A. As far as I am concerned it is.

Q. Can you testify of your own knowledge it is word for word? A. As far as I am concerned it is.

Q. Did you remember every word that was in there? A. I would not say that I remember every word in there, no, but the statement that I received from Mrs. Duensing as far as I am concerned it was word for word the statement that was made by the defendant.

Q. Can you testify to that as of your own knowledge Sergeant Galsell? A. As to whether it was word,—as far as I am concerned it was word for word.

Q. Do you remember what it said word for word? A. Offhand I do not.

Q. Then you can't testify it was word for word?

174 A. I still swear as far as I am concerned it is word for word.

Q. How many copies were made by Mrs. Duensing? A. I believe there was an original and,—I asked for an original and five copies I believe.

Q. Do you know whether or not the defendant was handed a copy? A. He was handed a copy—to my knowledge he was.

Q. You testified on direct examination that he read it—did he read it aloud? A. No he didn't.

Q. How do you know he read it? A. I took his word for it.

Q. State whether or not the defendant was taken to Little Rock by you? A. He was.

Q. When was he taken to Little Rock? A. What date?

Q. Yes sir. A. I believe that was on the,—I am not positive, I couldn't be positive—I think it was on the 5th or the 6th probably.

Q. Do you recall what day he was first arrested? A. No sir, I don't. I wasn't present when he was arrested.

Q. Do you recall what is the first date you knew he was in the custody of the police officers? A. Yes.

Q. What day was that? A. It was on the 5th of October.

Q. That was a Wednesday? A. That's right.

175 Q. Now, do you recall whether or not it was the next morning that he was taken to Little Rock? A. I believe that is correct.

Q. Did you take him to Little Rock? A. I did.

Q. In your car? A. I believe that is correct.

Q. Did anybody else accompany you on that trip? A. Chief of Police Norman Young.

Q. What time did you leave Pine Bluff? A. I would estimate about a quarter to 7:00. 20 to 25 minutes to 7:00.

Q. Where was the defendant when you picked him up on Thursday morning? A. He was in the city jail.

Q. Was he in jail or down in the Chief's office? A. I just don't remember.

Q. Do you recall him coming to the Chief's office before you went to Little Rock? A. I can't say whether he did or not.

Q. Do you recall or not that you had him remove all of his clothing on Thursday morning before you went to Little Rock? A. I believe that we took some clothing from him.

Q. Did you have him remove his shoes? A. I did. No, not that morning.

Q. When did you have him remove his shoes? A. The afternoon before—I mean on the 5th.

Q. On the morning you got him up to go to Little
176 Rock did he have shoes on? A. He did not.

Q. Did he have any socks on? A. He did not.

Q. Did you all take him to Little Rock barefooted? A. In my car, yes sir.

Q. Do you know whether or not this defendant had any breakfast before leaving that morning? A. No, I do not.

Q. Did you all stop any where before arriving in Little Rock? A. Not that I remember.

Q. Do you recall stopping at Don Lusby's? A. I could have—I could have stopped there and bought gas, I don't remember.

Q. Do you recall whether or not you and Chief Young got out at Don Lusby's, got out of the car and left the car a few minutes? A. We could possibly have, I don't remember.

Q. Did you eat breakfast? A. No, I had already eaten breakfast.

Q. Did you have coffee there? A. I don't remember.

Q. What did you do with the defendant during that time? A. He was in the car.

Q. What time did you arrive in Little Rock? A. About 7:25.

Q. Where did you take him in Little Rock? A. State Police Headquarters.

Q. What did you do while you were there? A. What do you mean what did I do while I was there?

177 Q. You took him there for some purpose obviously, what did you do with him when you got to the State Police Headquarters? A. Sat him down in the hall.

Q. How long did he sit down out in the hall? A. Oh, until,—I wouldn't know exactly.

Q. Well, have you got any idea? A. No I haven't.

Q. What did you do with him after he sat out in the hall Sergeant Halsell? A. Just to tell you the truth, I don't remember—if you are referring to the lie detector test, (interrupted)

Q. Anything you may have done. A. As far as I know he was given a lie detector test.

Q. In your presence? A. No sir.

Q. When did they give him the lie detector test? A. That same morning.

Q. What time did you get through with it? A. I don't know that.

Q. Did you stay around him all that day? A. I stayed with him there and brought him back that day.

Q. Did they complete the lie detector test before 12:00 o'clock? A. I don't know.

Q. You were present weren't you? A. Not when the lie detector test was given.

Q. What time did they turn him back over to you? A. It was afternoon or about noon.

Q. Have you got any idea along what time? A. I think about noon.

178 Q. Where did you go for dinner? A. I don't know—I usually eat at Hank's—whether I went there that particular day I don't remember.

Q. Do you know whether or not this defendant got any dinner? A. He sure did.

Q. Where? A. I brought it to him.

Q. Just what did he eat? A. Just what did,—sandwiches.

Q. How many? A. Two.

Q. What kind? A. I don't remember.

Q. Did he have on shoes when he ate? A. He did have shoes.

Q. When did you give him shoes? A. When I got to Little Rock Headquarters

Q. As soon as you got there? A. It might have been a few minutes after I got there.

Q. What time did you bring him back from Little Rock? A. That I could not truthfully say.

Q. Did Chief Young come back with you? A. He did.

Q. Did you make a statement to Frank as to the time he might get if he confessed that killing? A. I never discussed one minute anything about the punishment that might be rendered on this case with the defendant.

Q. Did you make the statement to him that he should tell the truth? A. I might have did that.

179 Q. Did you tell him what advantage might come to him by telling the truth? A. I did not.

Q. Do you recall whether or not it was dark when you returned to Pine Bluff? A. No sir, I don't.

Q. Where do you live Sergeant Halsell? A. I live in Dumas.

Q. State whether or not you took the defendant to Dumas with you that night? A. I did not.

Q. When did you take him to Dumas? A. The next night.

Q. Why did you take him to Dumas Sergeant Halsell? A. On recommendation from the Chief of Police and Sheriff here.

Q. Where did you keep him down at Dumas? A. In the City Jail.

Q. Did you stay there and guard him or did you turn him over to the jailer? A. I put him in myself and went home and went to bed.

Q. That was in the City Jail in Dumas? A. That's right.

Q. Do you know the name of the jailer on duty that night? A. Mr. Moring.

Q. What night was that? A. You mean what date?

Q. Yes sir, do you recall the actual date? A. I believe it was the night of October 7th, that's right.

Q. Sergeant Halsell, could it have been Thursday
180 night that you went to Dumas? A. It was on October 7th.

Q. Do you know the exact date that you went to Little Rock? A. On October 6th.

Q. What time did you pick the defendant up the next morning? A. At Dumas?

Q. Yes sir. A. Oh, around noon—no; it was around 10:00 o'clock.

Q. State whether or not you got some breakfast for the defendant the next day? A. I bought him ham and eggs, exactly what he ordered.

Q. What time of the day was that? A. That was in the neighborhood of 10:00 o'clock.

Q. I believe you stopped at a restaurant, is that correct? A. That's right. The restaurants we have in Dumas are not what I would call up to par and I took him to Cooper's Cafe—he advised me that he had already eaten that morning and was still hungry.

Q. Who advised you? A. The defendant. I ked him if he wanted some—I got him coffee before we left, he said he had already had breakfast and I got him some coffee and then on the way from Dumas I asked him if he would like more breakfast and he said he would and I stopped and bought him ham and eggs and milk at Cooper's Cafe in Gould.

Q. Did you stay there while he was eating? A. I did.

Q. The whole time he was eating? A. Yes.

181 Q. Sergeant Halsell, do you recall giving your gun to the proprietor of the cafe? A. No sir, I do not.

Q. You didn't leave the cafe? A. No.

Q. And leave the man in the custody of the manager? A. No sir.

Q. What time did you get back to Pine Bluff Sergeant Halsell? A. In the neighborhood of between 12:00 and 1:00 o'clock.

Q. State whether or not this defendant, (interrupted)

Mr. Mullis: If the Court please, if he is questioning him now along this line about whether it was voluntary or not this happened after the statement was made according to his testimony.

Mr. Branton: The reason I am going on into the question we intend to contradict that was the date in question, unless you want me to recall him later because I contend it was before the confession. If you want me to I will call him back later.

A. That isn't right.

Mr. Mullis: Let's get it all now.

Q. Did this defendant register any complaint to you as to his treatment in the Dumas jail by the Dumas jailer? A. By the jailer?

Q. Yes sir. A. He did not.

Q. Did he tell you whether or not he had been kept awake all night? A. By the jailer?

182 Q. Yes. A. No, he didn't.

Q. Did he tell you anybody in there, in the jail had been bothering him all night? A. He did.

Q. Who did he say bothered him? A. He said a big fellow.

Q. Did he say, (interrupted) A. He did not say he had been bothering him all night. He said he come in and talked to him.

Q. Did he say whether or not the fellow appeared to have been drinking? A. He didn't mention about him being drunk.

Q. Did you tell him anything about that you were going to report the fact that the man was drinking or that you were going to get on anybody down there? A. No sir. I told him I would say something to this party that went in and talked to him because it wasn't any of his business.

Q. What time did you get back to Pine Bluff Sergeant Halsell? A. Around one or a little after.

Q. Did you come straight to the police station? A. No.

Q. Where did you go? A. I stopped out there at the intersection of 65 and I guess, what is it, Ohio?

Q. Out there at the Rose Oil Company? A. Just between the Rose Oil Company and the Drive-In.

Q. How long did you stay out there? A. Approxi-
183 mately 15 to 20 minutes, maybe a little longer.

Q. Were you radioing in? A. I was trying to.

Q. What was the purpose of stopping there Sergeant Halsell? A. To contact the Sheriff and Mr. Young, the Chief of Police.

Q. You were coming on to the police station anyhow? A. Not at that time.

Q. Where were you going, you had the prisoner? A. We were going out to where the defendant had put $444.00 that he had taken from the deceased.

Q. Was there anything said about the coast being clear to bring him in? A. There was not.

Mr. Branton: That's all.

Re Re Direct Examination

By Mr. Mullis:

Q. Sergeant Halsell, this trip that he has been discussing here where you took this defendant to Dumas, state whether or not that was after he had made and signed the written statement or before he made and signed the written statement? A. It was after.

Q. There has been some questions about whether or not you gave the proprietor of the cafe in Gould your gun—state who is the proprietor of the cafe? A. T. L.
184 Cooper.

Q. Is he an officer? A. He is.

Q. What is his official capacity? A. He is the Chief of Police there.

Q. Do you know whether or not he has got a gun? A. He has got his own gun.

Q. You stated, Sergeant, that he was given a lie detector test—state whether or not he took that test voluntarily or under duress? A. It is always voluntary—we never force anyone to take a lie detector test.

Mr. Mullis: That's all.

Re Re Re Cross Examination

By Mr. Branton:

Q. Sergeant Halsell, were you there when he took the lie detector test? A. Not in the room where he took it.

Q. So you don't know whether any force was used on him or not do you? A. I know the man that gave it to him.

Q. You weren't in there were you Sergeant Halsell? A. I was not there.

Q. So you don't know of your own knowledge what
185 was done? A. If there had been anything going on I could have heard it—it is a very small room and the doors are kinda thin.

Mr. Branton: That's all.

Re Re Re Re Direct Examination

By Mr. Mullis:

Q. You say it was voluntary—that means he agreed to take the test? A. He did.

Q. When and where did he agree to take it? A. I asked him before I took him there the next morning.

Mr. Mullis: That's all.

Mr. Branton: That's all.

Witness Excused

Jury Recalled and Excused

(The Court, Counsel and Defendant return to the Court-room in the presence and hearing of the Jury, where the following proceedings are had, as follows, to-wit)

The Court: Gentlemen of the jury, there are some unavoidable delays, among other things, there is a witness

that isn't here—he is in court another place—that is something we can't help, neither can the court at the other place help it. We are working as rapidly as we can. I
186 am of the opinion from what counsel tell me that we will be at least until 12:00 o'clock getting these preliminaries worked out and I see no need of holding you here; so we are going to excuse you, but I want you to remember the admonition yesterday afternoon, do not discuss the case, do not permit anyone to discuss it with you—this is really for your own convenience keeping you from having to sit here—it might give you a chance to do a little telephoning concerning your business if you wish to. The court is going to excuse you now until 1:00 o'clock—please don't discuss the case and by all means permit no one to discuss it with you.

Mr. Branton: If the Court please, I think the witnesses ought to be told or the Sheriff to instruct them they are not to go.

The Court: Yes sir. Please tell the witnesses to stay here. We may need them. Let the audience remain seated until the jury gets out.

(The Court, Counsel and Defendant, retire to private chambers out of the hearing and presence of the Jury, where the following proceedings are had, to-wit:)

187 NORMAN YOUNG, a witness upon behalf of the State, having been first duly sworn, testified in chambers, as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. You are Chief Norman Young? A. Yes sir.

Q. Chief of Police of the City of Pine Bluff? A. Yes sir.

Q. As such Chief of Police were you active in the investigation of the killing of Mr. J. N. Robertson October 4th and thereafter? A. Yes sir.

Q. Last year. Did you arrest or cause this defendant to be arrested? A. I did.

Q. Was he in the custody of you as Chief of Police from the time he was arrested for 3 or 4 days? A. Yes sir.

Q. At any time during the time he was in your custody

did he make a statement to you or did he make a statement in your presence? A. Yes sir.

Q. Was that statement reduced to writing? A. Yes sir.

Q. Was it signed by him? A. Yes sir.

Q. Did you witness the statement after it was reduced to writing and after he had signed it? A. Yes sir.

188 Q. Do you know whether or not he read the statement or had an occasion to read the statement? A. Yes sir.

Q. Do you know whether or not it was read to him in addition to that? A. Yes sir, it was read to him.

Q. Do you know whether or not he initialed each separate page of that statement? A. Yes sir.

Q. Chief Young, state whether or not during the time he was in your custody he was threatened or abused, or, in any manner, in order to get him to make this statement? A. He was not.

Q. State whether or not he was promised any reward or any immunity for making such a statement? A. He was not.

Mr. Mullis: Take the witness.

Cross Examination

By Mr. Branton:

Q. Chief Young, when was it the defendant was first arrested? A. About, approximately 10:00 A. M. on the morning of the 5th of October.

Q. I believe this killing was on a Tuesday night, 189 is that correct? A. I believe so.

Q. You arrested him Wednesday morning? A. That is correct.

Q. Where was he when you arrested him? A. At the Bluff City Lumber Company.

Q. Was he on duty there to your knowledge? A. To my knowledge he was.

Q. Who was with you when you made the arrest? A. Captain Booher.

Q. Did you have a warrant for his arrest? A. We did not.

Q. Did you advise the defendant at that time that you were putting him under arrest? A. I did.

Q. Did you tell him why he was being arrested? A. Yes sir.

Q. What did you tell him? A. Because of some falsehoods we had caught him in questioning him out there at the scene.

Q. You had questioned him previously? A. We questioned him the night of the murder, also the next morning.

Q. Did you bring him to jail immediately Chief Young? A. Yes sir.

Q. Did you question him further after you got him in jail? A. No sir, not immediately after putting him in jail.

Q. Did you question him that afternoon? A. Yes sir.

Q. Do you recall for how long? A. Just for a short period.

190 Q. Do you recall the time of the afternoon you were questioning him? A. It was later in the afternoon, I don't recall the exact time that he was questioned on the date of the 5th or 6th.

Q. How many meals a day do you serve in the city jail? A. Two.

Q. What time is the first meal? A. Around 8:00 A. M.

Q. What time is the last meal? A. Oh, between 4 and 5:00 P. M.

Q. State whether or not to your knowledge the defendant was given any supper that afternoon? A. I have no knowledge of that—it is there to be fed.

Q. Do you know whether or not he was in fact in your office being questioned during the time supper was being served? A. It is possible.

Q. Did you go with Sergeant Halsell on Thursday morning to Little Rock? A. The morning of the 6th?

Q. Yes sir. A. I did.

Q. What time did you leave the police station? A. Approximately 8:00 o'clock, between 8 and 9.

Q. What was the defendant wearing when you took him to Little Rock? A. He was wearing a pale gray khaki trouser and sport shirt and dark shoes with zippers.

Q. Are you sure he had some shoes on Chief Young? A. I am not sure at that time—I believe he did.

191 Q. To refresh your memory, wasn't the defendant in fact barefooted Chief? A. It is possible we took his shoes off and examined them that afternoon after he was arrested.

Q. Did you take him straight to Little Rock or did you stop after leaving the police station? A. We did not stop.

Q. Didn't you in fact stop at Don Lusby's? A. Possibly to gas up but no other, (interrupted)

Q. Did you get out of the car? A. It is possible, I don't recall.

Q. Did both of you get out of the car? A. It is possible.

Q. Don't you remember whether you did Chief Young? A. I remember now that you recall it we did stop for gas, to gas up because of him having this courtesy card with the State Police.

Q. Were you in your car or the car of the State's police? A. In the State's car.

Q. Do you know whether or not the defendant had any breakfast before he left the jail? A. I don't recall.

Q. Do you know whether or not you left the jail before breakfast was served? A. Breakfast was served at approximately, during anywhere, in the neighborhood of 8:00 o'clock A. M. in the morning.

Q. Do you know whether or not on that particular morning breakfast had been served before you took the defendant away from the police station? A. I
192 do not.

Q. What time did you arrive at Little Rock? A. Approximately an hour after we had left Pine Bluff.

Q. Did you remain in the presence of the defendant the whole time he was in Little Rock? A. I did not.

Q. Did you return to Pine Bluff during the day? A. Later that afternoon, yes.

Q. What was done to the defendant in your presence in Little Rock Chief Young? A. He was questioned in my presence.

Q. State whether or not any threatening remarks were made to him? A. There were not.

Q. Was any profanity used in questioning him? A. No sir.

Q. Did you at any time use any profanity in questioning him? A. I didn't.

Q. After the defendant was arrested state whether or not he was taken before a magistrate or a judge to your knowledge? A. He was not.

Q. Was he ever taken before a magistrate or a judge to your knowledge? A. Not to my knowledge.

Q. Now Chief, what time did you get back from Little Rock? A. Approximately 5:00 P. M.

Q. Do you recall it was just about dusk dark? A. It was getting late in the afternoon, yes.

Q. What was done with the defendant? A. He
193 was placed in jail.

Q. For how long? A. For the remainder of the night.

Q. State whether or not Sergeant Halsell took the defendant to Dumas that night? A. He did not.

Q. Chief Young, do you recall me asking you the question the other night in your office? A. I don't remember you asking me that question, I do not.

Q. Chief Young, do you recall making the statement to me that Sergeant Halsell took the defendant on to Dumas about an hour after he got back from Little Rock? A. No, sir, he did not.

Q. I said, do you recall making that statement to me? A. I do not.

Q. Do you recall me asking you the question? A. No I don't Wiley.

Q. Do you recall me asking you anything about the case? A. I remember you asked me some questions but I don't remember that particular question.

Q. Did Sergeant Halsell at any time take the defendant to Dumas? A. He did.

Q. When did he take him to Dumas? A. On the evening of the 7th of October.

Q. Why did he take him to Dumas? A. Because I had received some calls on the phone and I considered it best to have him out of town for at least one night.

Q. Did you consider the Dumas jail a safe place
194 to confine him? A. Sergeant Halsell was familiar with the Dumas jail and he suggested using it.

Q. Chief Young, do you recall whether or not any of Frank's relatives came to the jail attempting to see him after his arrest? A. Not to my knowledge.

Q. Up until the time of the confession would they have been permitted to see him if they had come there? A. No sir.

Q. Why is that Chief Young? A. Because we don't make it a practice of letting anyone talk to them while they are being questioned.

Q. How long do you usually hold a prisoner under such circumstances before permitting anybody to see them Chief Young? A. 72 hours if necessary.

Q. Or longer if necessary? A. Not without a formal charge being placed.

Q. Chief Young, do you know whether or not any relatives of the defendant were arrested prior to the confession of the defendant? A. They were not.

Q. Do you know his brother James? A. I do.

Q. Do you know whether he was arrested? A. He was not arrested—he was brought in for questioning—he wasn't placed under arrest.

Q. Do you know whether or not he was locked up in
195 jail all night? A. Is that the preacher?

Mr. Mullis: If the Court please, if he were it has no bearing on this, about what happened.

Mr. Branton: Your Honor please, we intend to show that they went out and brought several members of this boy's family down and he was aware of the fact that they arrested other members of his family and that that is another thing that influenced him to make the alleged confession.

Mr. Mullis: The question involved in here is whether or not this confession was voluntary.

The Court: I rather think you are going far afield Wiley but I want to be lenient with you—go ahead.

Mr. Branton: We think arresting close members of the family in an effort to spare them from confinement in jail certainly would have some influence on whether or not the man was going to confess or make a confession.

The Court: Well, go ahead.

Q. Chief Young, do you know whether or not the defendant's brother, preacher James Davis, was arrested and confined in jail over night? A. He was.

Q. Do you know whether or not two of the said James Davis' minor children were brought down for questioning? A. They were.

Q. When was this the two children were brought down for questioning? A. That was on the evening of the 6th.

Q. Did you have a warrant of arrest for them? A. We didn't—they volunteered their information.

196 Q. When was his brother James arrested? A. After we talked to the children.

Q. On what afternoon? A. The same afternoon.

Q. What was that date? A. On the afternoon of the 6th.

Q. Now, did you have a warrant of arrest for James Davis? A. He wasn't arrested at the time that he was brought up to be questioned.

Mr. Mullis: Certainly, if the Court please, that has no bearing on it whether he had a warrant of arrest for somebody else—that has no bearing at all on it.

The Court: None whatsoever.

Mr. Branton: I think it does.

The Court: What you are trying—the purpose of this hearing is to determine whether or not the confession is admissible in evidence.

Mr. Branton: Yes sir.

The Court: I don't see that this is—go ahead.

Q. State whether or not the minor son of another brother who purportedly is a bishop in the church was brought down for questioning? A. There was two children brought down to the office—I don't know who was their father.

Q. Do you know how many different relatives were arrested and, or brought down for questioning? A. There was four.

Q. Now, when was Frank Payne transferred to the
197 county jail? A. After being returned from Dumas.

Q. Now, after he made the confession did you permit anybody to see him? A. After the confession he was placed in the county jail.

Q. What day was he placed in the county jail? A. It was on the,—let me see—let me get my dates straight—on the evening of the 7th.

Q. Now, Chief Young, when you were asked by anyone after that date concerning Frank Payne did you tell them he had been transferred to the county jail? A. I don't remember anyone asking me.

Q. Chief Young, state whether or not you recall on Monday morning my asking you if I could see the defendant Frank Payne? A. I don't remember you asking me that.

Q. Do you ever recall me asking you to see Frank Payne? A. I do not.

Q. You don't recall having to clear it with Mr. Mullis before I was even told that he was in the county jail? A. I do not. I didn't know you were representing him or interested in him until some time later.

Q. Chief Young, when did the defendant first tell you that he wanted to make a confession? A. About approximately 1:00 P. M. on the evening of the 7th of October.

Q. Where was he at that time? A. He was in a cell in the city jail.

Q. Was anyone present when he told you that? A. Not that I can remember—there could have been some other prisoner in the cells close by.

198 Q. Was he in an upstairs cell or downstairs? A. Upstairs.

Q. Did you go up to his cell? A. I did.

Q. State whether or not there was anything said to the defendant about making the confession to you in private? A. There was.

Q. State whether or not you told him, the defendant, there might be 30 or 40 people there in the next few minutes? A. I said it was possible.

Q. Did he then go downstairs to your office? A. He did.

Q. Was anyone else present in the room? A. There was not.

Q. Was his confession to you interrupted? A. It was.

Q. By what? A. By a knock on the door, at the front door of my office.

Q. Did you go to the door Chief Young? A. I did.

Q. Who was at the door? A. Sheriff Harold Norton and Sergeant Buck Halsell.

Q. Did you permit them to come in? A. I did not.

Q. Did you tell them anything about the defendant? A. I told them he was giving me an oral confession and I had promised him it would be in private.

Q. Did you then close the door? A. I did.

Q. Did the defendant then complete his confession? A. Roughly, yes.

199 Q. Then what did you do Chief Young? A. I asked him if he would mind the Sheriff and Sergeant Halsell to come in, if he would mind telling them exactly what he told me.

Q. How much later was that? A. Oh, not more than five minutes.

Q. Then did other people come in? A. Later on—I don't remember exactly how long it was.

Q. Did he repeat his statement to Sergeant Halsell and Sheriff Norton? A. He did.

Q. At that time did you have Mrs. Duensing present? A. Not at that time, no.

Q. He repeated his statement to them? A. He did.

Q. Then what was done? A. I believe the next thing that was done we called Mr. Mullis.

Q. How long after you first went to the cell was it when you called Mr. Mullis, just approximately? A. I would say within an hour.

Q. And was Mrs. Duensing contacted immediately? A. Some time later—it wasn't too much later—I don't know the exact time elapse.

Q. How long after the confession to you was it before the statement was given in front of a stenographer? A. Not more than an hour and a half.

Q. And where was that statement taken? A. In my office.

Q. Did you see Mrs. Duensing take the statement?
200 A. I did.

Q. Did she type it up in your office? A. She did not.

Mr. Branton: I believe that's all.

Re Direct Examination

By Mr. Mullis:

Q. Chief Young, I believe you said on direct examination that this man's shoes were removed? A. Yes sir.

Q. Why were they removed? A. Because we wanted to test them for blood stains.

Q. State whether or not there was any indication there might be blood? A. Yes sir.

Q. State whether or not you removed his socks too? A. Yes sir.

Q. For what reason did you remove them? A. For the same purpose.

Q. Chief Young, at any time during the interrogation of this defendant was there any violence or any threats towards him or any abuse or anything or had any promises of any reward or immunity been made to him? A. None whatsoever.

201 Q. Immediately after the defendant made this statement and had signed the statement what did he do—what was done with him? A. After leaving the office

he went to the,—we all went to the Bluff City Lumber Company where he reenacted the crime.

Q. Was there any threats or any abuse or any promise of reward or immunity to make him go to the scene and reenact the crime? A. There was not.

Q. Did he there voluntarily reenact the crime? A .He did.

Mr. Mullis: Take the witness.

Re Cross Examination

By Mr. Branton:

Q. Chief Young, was that immediately following the signing of the confession? A. Yes sir.

Q. State whether or not there were television cameras out there at the scene? A. There was—there wasn't when we arrived, but some time later—I didn't know when they arrived.

Q. Was the defendant in your custody at that time?

A. He was.

202 Q. Had he already reenacted the scene before the TV cameraman had arrived? A. That I don't know.

Q. Did you permit the filming of televising of the reenactment? A. I wasn't asked one way or the other.

Q. You didn't offer any objection to it? A. No sir.

Mr. Branton: I believe that's all Chief Young.

Mr. Mullis: That's all.

Witness Excused

203 BILL MILES, a witness upon behalf of the State, having been first duly sworn, testified in chambers, as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. Your name is Mr. Bill Miles? A. Yes sir.

Q. Where do you live Bill? A. 1427 West 23rd.

Q. Where do you work? A. Pine Bluff Commercial.

Q. How long have you worked there? A. Five years.

Q. What is your position with the Commercial? A. City Editor.

Q. As City Editor of the Pine Bluff Commercial did you cover to some extent the investigation of the murder

of Mr. J. N. Robertson? A. Yes sir, to some extent,—not all of it.

Q. I said to some extent. State whether or not you were present in the office of the Pine Bluff Chief of Police when this defendant Andrew Payne made a statement? A. Yes sir.

Q. Do you know who took the statement down? A. Yes sir, Mrs. Morah Duensing.

Q. Do you know who conducted the questioning in which the statement was made? A. Yes, sir.

204 Q. Who? A. Sergeant Buck Halsell, State Policeman.

Q. Bill, state whether or not at any time when you were present there were any threats or if there was any abuse or if there was any promises of reward or immunity to have this defendant make that statement? A. None whatsoever.

Q. To get him to make that statement? A. None whatsoever to get him to make that statement.

Q. Shortly—were you there at the time the statement was,—he was handed a copy of the statement? A. Yes sir, we were all handed a copy of the statement at the same time.

Q. Did he sign this statement? A. Yes sir.

Q. Did you witness that statement? A. Yes sir.

Q. Was there any abuse, threats or promise of immunity or reward to get him to sign that statement? A. No sir.

Q. State whether or not shortly after the statement had been signed and witnessed by you that you went to the scene of the accident, the scene of the crime? A. Yes sir, I did.

Q. Did the defendant go to the scene of the crime? A. Yes, sir, he did.

Q. Were there any promises or threats made towards him to get him to go out there? A. Not in the Police Chief's office and I can't tell other than that because I went out in another car.

205 Q. Did you observe the reenactment of the crime there? A. Yes sir.

Q. In which this defendant participated? A. Yes sir.

Q. Did you at the scene of the crime have any conversation with this defendant? A. After the reenactment of it a very short conversation, yes sir.

Q. When you had this conversation were you in the middle of a crowd? A. No, sir, we were—shall I explain where it was?

Q. If you will sir. A. After he had reenacted his alleged part in the crime he took a seat behind the counter in the lumber company's office—the officers and other people who were there were standing in front of the counter as far as from here to that wall away.

Q. About how far is that sir? A. 15 feet. 15 to 20 feet. I went behind the counter and leaned over him and asked him a question and he answered it.

Q. What did you ask him? A. I asked him if he had, in fact, if he had been mistreated in anyway?

Q. What was his answer to you? A. His answer was, "No sir." In words to the effect that he had never been treated nicer.

Mr. Mullis: That's all.

206 Cross Examination

By Mr. Branton:

Q. Mr. Miles, did the defendant know who you were? A. I doubt it very seriously, except he was told at the time I witnessed the confession who I was.

Q. Were several other people there at that time? A. During, (interrupted)

Q. In other words, when you were introduced to the defendant where were you? A. At the police chief's office.

Q. He was at the time told who you were? A. To the best of my recollection, yes sir.

Q. Were there other people present at the same time? A. Yes sir.

Q. Were they also introduced to the defendant? A. Yes sir.

Q. Was he also told who they were? A. As far as I know he was. This wasn't a formal introduction or anything like that—we were pointed out.

Q. Was there a sequence or continuous introduction? A. I doubt that because I was,—I came in after some of them had already been in and I think there were others that came in after I did before the testimony, rather before the statement was taken.

Q. Approximately how many people were pointed out and identified to the defendant? A. Well, Mr.
207 Mullis was in the office—he knew who he was. Police Chief Norman Young, he knew who he was.

Q. How do you know he knew who Police Chief Norman Young was? A. I assume he did.

Q. Oh! A. Buck Halsell, State Trooper, was there. Harold Norton, the Sheriff, was there. I assume he knew these people because they had been working on the case.

Q. That is just an assumption? A. On my part.

Q. You don't know that he knew anybody? A. Not until these people who were pointed out to him were pointed out, that was my, (interrupted)

Q. Mr. Miles, (Interrupted)

Mr. Mullis: Let him finish please.

Mr. Branton: Go ahead.

A. I was pointed out to him and the photographer Geleve Grice I believe is his name, I am not sure about his first name, also witnessed the statement, was pointed out to him. Mrs. Morah Duensing, they told him who she was.

Q. Do you know whether or not Mr. Mullis was pointed out to him? A. I do not think he was.

Q. Do you recall whether or not Chief Young was pointed out? A. I do not think he was. As I said, they were in the office when I got there.

Q. Out at the scene when you talked to the defendant did you have any kind of writing pad? A. None
208 whatsoever.

Q. Did you tell him that you were a newspaper reporter? A. I did.

Q. When you went in and heard this confession do you know whether or not he had already made a statement? Do you know whether or not he had already made a confession to the Chief? A. No sir, I don't. No, I don't.

Q. Mr. Miles, who asked you to come in the Chief's office? A. The Police Chief.

Q. What did he tell you he wanted you to come in for? A. To witness a confession.

Mr. Branton: That's all.

Mr. Mullis: That's all.

Witness Excused

209 NORMAN YOUNG, a witness upon behalf of the State, recalled, testified further in chambers, as follows, to-wit:

Further Cross Examination

By Mr. Branton:

Q. State your name please? A. Norman Young.

Q. Mr. Young, you are the same Mr. Young that just testified? A. I am.

Q. As Chief of Police of Pine Bluff. Chief state whether or not prior to the time of the confession of Frank Payne you would have permitted a lawyer to see the defendant? A. Yes.

Q. Had a lawyer requested it? A. He was asked if he wanted counsel.

Q. Would you have permitted a lawyer to see him before he confessed?

Mr. Mullis: If the State please, the question is completely out of line—it has no bearing on whether or not,—if he wants to ask the direct question about whether or not the boy asked for a lawyer or whether or not any lawyer who had been retained requested to see him, (interrupted)

The Court: This is not a proper question the Court doesn't think, what he would have done—the question is what was done down there.

Mr. Branton: Note our exceptions.

Witness Excused

210 HAROLD NORTON, a witness upon behalf of the State, having been first duly sworn, testified in chambers, as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. Your name is Harold Norton? A. It is.

Q. You are the same Harold Norton that testified previously in this case? A. Yes sir.

Q. Sheriff of Jefferson County? A. Yes sir.

Q. Active in the investigation of J. N. Robertson's murder? A. Yes sir.

Q. Mr. Norton, state whether or not you were present when this defendant made a statement purporting to be a confession in this case? A. I was.

Q. Was that statement—state where it was taken? A. In the Chief of Police's office.

Q. Mr. Norton, state whether or not any promise of immunity or reward or whether any threats were made on abuses practiced on this defendant in order to get him to make that statement? A. There was not.

Q. Who, if you know, reduced the statement to writing? A. Mrs. Guensing was taking this in shorthand—is that what you had reference to?

Q. Yes. A. Mrs. Guensing.

211 Q. Was that statement transcribed? A. Yes sir.

Q. Was it handed to the defendant? A. It was.

Q. To read? A. It was.

Q. Did the defendant at least go through the motions of reading it? A. He did.

Q. State whether or not he agreed that that was the statement he made? A. Yes, he agreed to it and he initialed each page.

Q. He initialed each page? A. Yes sir.

Q. Do you know whether there were any changes made in it at his request? A. There was one word as well as I remember the word "floor" I could be wrong in this, but one word was left out that was added to it with his permission and also Frank initialed the word. He knew we added one word to it.

Q. After he had read and signed this confession state whether or not he went to the scene of the crime? A. He did.

Q. State whether or not any promises of immunity or reward or any threats or abuse was practiced on this defendant in order to get him to go to the scene of the crime? A. None whatsoever.

Q. What did he do there Mr. Norton? A. He reenacted the crime.

Mr. Mullis: Take the witness.

212 Cross Examination

By Mr. Branton:

Q. Sheriff when, what time was it when you heard this confession? A. What time of the day?

Q. Yes sir. A. It was I believe it was about 1:00 o'clock as far as the time I remember is concerned.

Q. Now Sheriff where, who was with you when you first heard, when you first went over to the Chief's office? A. Sergeant Buck Halsell and I went over there.

Q. When you arrived do you know whether or not the defendant had already confessed? A. I do not. The Chief of Police called and said, (interrupted)

Mr. Mullis: Don't tell him what he said please Sheriff.

A. We were called over to the Chief's office.

Q. Did you know that the defendant was ready to make a confession when you went over there? A. We did.

Q. You were present just prior to that time? A. No.

Q. So how long was it after you got the call was it before you went over there? A. I went—it was immediately.

Q. How soon after you got over there was it before he confessed? A. Well, it must have been 30 minutes.

213 Q. Let me ask you, did he give an oral confession to Sergeant Halsell first? A. That's right.

Q. Was that made immediately after you got over there? A. That's right.

Q. You knew he was going to make a confession when you went there? A. That's right—I mean, it was our, (interrupted)

Q. You were not present just prior to getting the call? A. No.

Mr. Mullis: Present where?

Q. You were not over at the police station when you got the notice he was going to make a confession were you? A. No.

Q. Then you don't know whether any force was used or not do you Sheriff Norton? A. Well, no, I wasn't there.

Q. You mean then there was none used in your presence? A. That's right.

Q. And the confession was made immediately upon your arrival, is that correct? A. At his request.

Q. Were you present when Mrs. Duensing took it down in shorthand? A. I was.

Q. Were you present when Mrs. Duensing brought the typewritten statement back? A. I was.

Q. Do you know whether or not the defendant can read? A. Yes, he read it.

214 Q. How do you know he read it? Did he read it aloud? A. He did not read it aloud.

Q. Then how do you know he read it Sheriff? A. Well, Wiley, I could tell he was reading it, I mean, you know, you can tell when a fellow is not reading—he admitted the statement as,—he admitted the statement, that he could read.

Mr. Branton: I believe that's all.

Re Direct Examination

By Mr. Mullis:

Q. Mr. Norton, when you arrived there and while the defendant's statement was being taken state whether he was in an excited state or not? A. He was not.

Q. State whether or not he gave any evidence that would indicate he had been abused or threatened? A. None whatsoever.

Mr. Mullis: That's all.

Re Cross Examination

By Mr. Branton:

Q. Sheriff Norton, state whether or not you have seen this defendant excited over anything? A. I have
215 not.

Q. Since the investigation—did you see him on the night of the killing? A. I did not.

Q. Did you see him the next morning? A. Not the next morning.

Q. Did you see him when he supposedly reenacted the crime? A. I did.

Q. Was he excited then? A. He was not.

Q. Has he ever appeared excited to you? A. He has not.

Mr. Branton: That's all.

Mr. Mullis: That's all.

Witness Excused

216 GELEVE GRICE, a witness upon behalf of the State, having been first duly sworn, testified in chambers, as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. State your name please. A. Geleve Grice.

Q. Where do you live sir? A. A. M. & N College.

Q. What is your occupation? A. Photographer.

Q. State whether or not you recognize this defendant here? A. Yes sir.

Q. State whether or not you were present at the office of the Chief of Police of the City of Pine Bluff on October 7th when he made a statement? A. I was present.

Q. State whether or not there were a number of other people present? A. Yes sir.

Q. Were you there during the time he gave a statement? A. Yes sir.

Q. State whether or not there was any promise of reward or immunity or whether any threats were made or whether he was abused in order to get him to make that statement? A. No there wasn't.

Q. Did he make the statement voluntarily? A. Yes sir.

Q. Were you pointed out to him and told, also
217 told who you were when you came in, were you introduced to him? A. No, I wasn't introduced to anyone.

Q. Do you recall whether or not he was told while you were there who each one of the people in the room were? A. I don't remember that—I wouldn't want to make that statement—I don't remember whether he was or not.

Q. State whether or not his statement was reduced to writing? A. You mean whether he signed the confession?

Q. Whether it was written out and he signed it? A. Yes sir.

Q. State whether or not that was done voluntarily? A. You mean his signature on it?

Q. Yes. A. Yes, that was done voluntarily.

Q. Shortly after the statement was taken and he signed it state whether or not you went to the scene of the crime? A. I did.

Q. State whether or not the defendant also went to the scene of the crime? A. That is correct.

Q. Were there any threats or abuse or promise of immunity or reward to get him to go out there? A. No.

Q. State, if you know, what he did after he got to the

scene of the crime? A. A portion of it—I was out as a photographer for the Commercial and when I got out there their photographer had appeared so I was kinda in the background—I saw him reenact some portions—I didn't see everything.

Q. State whether or not this defendant, when you were present and he was giving his statement appeared to
218 be nervous or agitated or if he gave any evidence of having been abused or threatened? A. I couldn't detect any—I could not detect whether he had or not.

Mr. Mullis: Take the witness.

Cross Examination

By Mr. Branton:

Q. Sir were you present when the statement was originally made in the presence of a reporter who took it down in shorthand? A. Are you referring to the statement made in the office of the Chief of Police?

Q. Yes sir. A. Yes sir.

Q. Now, were you also present when the stenographer brought the typewritten statement back? A. I am certain I was if it all happened during that period.

Q. I am asking you did it all happen during that period? A. Well now, the only thing I know regarding this is what I saw and heard in the presence of the other officers and the Chief of Police.

Q. Let me ask you this question—who asked you to come in there? A. The Sheriff.

219 Q. Where were you when the Sheriff contacted you? A. I had gotten out of my car and was fixing to put a penny in the meter in front of the gun shop right down here—he was standing there and he asked me to come in that he wanted me to witness something.

Q. Were there any other people in there when you went in ? A. Yes sir.

Q. When you went in did you hear the questions being asked to the defendant? A. I remember them asking him to tell us what he had to tell us. They asked him to tell us what you have got to tell us.

Q. Was there a woman present? A. Yes sir.

Q. Was she putting what was said down in shorthand to your knowledge? A. Yes sir.

Q. Did the defendant sign it immediately as soon as he made the statement? A. No sir—the defendant signed it when, the witnesses I presume were there, I think everybody got a seat and they asked him to tell us what you have got to tell us and at this point as far as I can recollect that is when he signed it.

Q. What did he sign? A. He signed some statement, questions.

Q. Was it a typewritten statement? A. I presume so.

Q. When was it typewritten? A. I don't know sir.

220 Q. Was it already typewritten when you arrived there? A. I am certain it was because it was too much, I imagine it was typed—I was only in there, oh, five or ten minutes.

Q. Did you have a copy of the typewritten paper? A. No sir.

Q. Did anybody read it aloud? A. Well, I don't remember that much detail—I just couldn't say because I wouldn't want, (interrupted)

Q. You didn't have a copy of it? A. No sir.

Q. Did you know that you were going in to hear a confession when you went in? A. No sir, not when the Sheriff asked me to go with him that he had something he would like for me to witness.

Q. How long after you arrived before they asked you to do anything? A. Not too long—not too long.

Q. How was this confession made—you have got me puzzled—did it appear that the confession had already been made and you were merely a witness to the signing or did you actually hear the confession being made to the reporter? A. The only thing I know is what I heard and saw and what had gone on before I got there I couldn't say.

Q. Did they have this typewritten statement when you arrived? A. Yes, some questions I think, I don't know, you might think I am not certain about it.

Mr. Branton: That's all.

221 Re Direct Examination

By Mr. Mullis:

Q. I believe you stated that there was a lady present? A. Right sir.

Q. State whether she had a pad writing on it? A. She had a pad.

Q. Was she doing that writing at the time that the defendant was being questioned? A. Yes sir.

Q. Do you remember Sergeant Buck Halsell? A. Yes sir.

Q. Who was doing the questioning of the boy? A. Sergeant Buck Halsell.

Q. While he was doing the questioning this lady was writing? A. Right.

Q. Is that correct? A. Yes sir.

Q. Then immediately after that questioning did you sign a statement or was it some time—I mean, did you witness the signature of the defendant or was it some time later? A. Yes, I witnessed on the signature and also signed this statement after he had signed it.

Q. After he had signed it? A. Yes sir.

Q. State whether or not there was some time intervening between the time this lady was writing down the notes and the time that he signed the confession? A. That is
222 pin-pointing it a little too close—I don't remember quite that.

Q. Let me ask you this question—did you witness his signature on this—did you write your name on this piece of paper witnessing his signature? A. Yes sir.

Q. Was that after he had been questioned and the lady took it down? A. Yes sir, that's right.

Q. No further questions, but I would like to ask for the record, please state Mr. Grice whether or not, for the record, you are a member of the colored race? A. Yes sir.

Mr. Mullis: That's all.

The Court: Are you an instructor out at the college?

A. I am on the staff sir—I am the college photographer and assistant director of public relations and a faculty member as such.

The Court: All right.

Witness Excused

223 BUCK HALSELL, a witness upon behalf of the State, recalled, testified further in chambers, as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. Sergeant Halsell, you are the same Sergeant Halsell who just testified a few minutes ago? A. That is correct.

Q. In your testimony I believe it developed that you took the defendant to the Dumas jail? A. I did.

Q. I wish for the record your would describe the type of jail, and, just describe the jail down there at Dumas? A. It is a jail that consists of 8 cells with two steel cots and mattresses and blankets to each cell. The jail is located in the rear of the City Hall and the cells are in the middle of the run-around around them.

Q. Please describe the jail as far is cleanliness is concerned and security is concerned? A. Well, the cleanliness part of it, I don't think you will find a jail in Arkansas any cleaner. For the security end of it, I don't think you would find any any better. It has two outside barred doors locked and an inside barred door locked then the cells there has a lock on them with a steel coupling that protects the lock to keep them from being beat off.

Mr. Mullis: That's all.

Mr. Branton: No questions.

The Court: You say it is in the City Hall?

A. It is in the rear of the City Hall.

The Court: Okay.

Witness Excused

224 MRS. MORAH DUENSING, a witness upon behalf of the State, having been first duly sworn, testified in chambers, as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. Please state your name? A. Mrs. Morah S. Duensing.

Q. Where do you live Mrs. Duensing? A. 3,002 North Iris, Pine Bluff.

Q. What is your occupation? A. I am Official Court Reporter for the Fourth Chancery District of Arkansas. I am a little bit excited right now.

Q. That's all right, Mrs. Duensing. How long have you been taking shorthand and transcribing your notes? A. Oh, 30 years.

Q. State whether or not you were present at the office of Chief of Police in Pine Bluff, Arkansas, on October 7th, last year, for the purpose of transcribing a statement made by this defendant? A. Yes sir.

Q. Mrs. Duensing, did you take the statement that he made? A. Yes sir.

Q. Did you transcribe that statement? A. Yes sir.

Q. And type it out? A. Yes sir.

Q. Did that typed statement represent a true copy of the statement he had made? A. Yes sir.

225 Q. Was that statement returned by you to the police? A. No, the Chief of Police sent a policeman to my office with me—I don't know his name, but he sent a policeman along with me and he waited until I had transcribed it and I sent it back by him.

Q. By that policeman? A. By that policeman.

Q. Do you remember, Mrs. Duensing, the approximate length of time it took you to transcribe it? A. Oh, probably an hour and a half.

Q. Mrs. Duensing, state whether or not any promise of reward or immunity was made to this defendant or whether any threats were made toward him or any abuse practiced on him in order to get him to make this statement? A. No sir, not in my presence.

Q. State what the defendant's condition was at the time he made the statement as regards his calmness, nervousness or excitability? A. Well, he seemed to be very calm.

Mr. Mullis: That's all.

The Court: You first took the statement in shorthand and then you transcribed it and typed it out?

A. Yes sir, in my office.

Cross Examination

By Mr. Branton:

Q. Mrs. Duensing, were you present when the de-
226 fendant signed the confession? A. No sir, I was not.

Q. What did you do with the material after you typed it up? A. I gave it to this policeman—I believe there were six copies—I gave them all to the policeman.

Q. You didn't go back to the jail? A. No, I didn't.

Q. Did you know that you were going over to take a confession when you went over to the jail? A. Yes, I did—

the Chief of Police first talked to Judge Harris about it and got the permission for me to go over. He told me that was what it was.

Q. Did he tell you the confession had already been made and they wanted to reduce it to writing? A. I believe that the Judge told me that the boy was ready to make a confession—I think that was what he said.

Q. Did you have occasion to observe the demeanor of the defendant at the time his testimony was being taken? A. Yes—I sat next to him—I sat right next to him.

Q. State whether or not he exhibited any interest in the questions that were being asked? A. Well, I noticed that he watched me—he seemed to be more interested in what I was doing than in what he was saying—I don't know—he was watching me take it down in shorthand and he would wait for me—he wanted to be sure that he did not talk too fast.

Q. How long after you arrived was it before the questioning of the defendant was started? A. Well, they sent out and got several witnesses while I sat there. I maybe was there 15 or 20 minutes before they started.

Mr. Branton: I believe that's all.

227 Re Direct Examination

By Mr. Mullis:

Mr. Eilbott: Ask her who Judge Harris is for the record.

Q. Who is Judge Harris? A. He is the Chancellor for the Fourth Chancery District.

Mr. Mullis: That's all.

Witness Excused

228 NOLTON BROACH, a witness upon behalf of the State, having been first duly sworn, testified in chambers as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. State your name? A. Nolton Broach.

Q. Where do you live Mr. Broach? A. 620 West Third, Pine Bluff.

Q. What is your occupation? A. Patrolman, Police Department, Pine Bluff.

Q. How long have you been on the police department? A. Three years and two months.

Q. On October 7th, last year, do you recall the statement of this defendant being taken over at the Chief's office? A. Pat, I don't recall whether it was October 7th or not.

Q. Do you recall the statement being taken? A. Yes sir, I do.

Q. State whether or not you accompanied Mrs. Duensing to her office and waited while she transcribed that statement? A. I did.

Q. Did she hand you that statement when she finished transcribing it? A. She did.

Q. What did you do with it? A. I taken it back to the Chief's office and gave it to him.

Q. Was Sergeant Halsell present at the time? A. Yes sir, he was.

Mr. Mullis: That's all.

229 Cross Examination

By Mr. Branton:

Q. I believe you said Mr. Buck Halsell, Sergeant Buck Halsell, was there with Chief Young at the desk? A. At the desk, yes sir.

Mr. Branton: That's all.

Witness Excused

Mr. Mullis: If the Court please, that is what we have on the confession.

The Court: Okay.

230 E. D. DAVIS, a witness upon behalf of the Defendant, having been first duly sworn, testified in chambers, as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name? A. E. D. Davis.

Q. Where do you live? A. 803 Birch.

Q. Is that here in Pine Bluff? A. Yes sir, that is my residence where my family is; at the present time I am in Mobile, Alabama.

Q. What is your occupation? A. Preacher.

Q. What is your age? A. 43.

Q. Are you related to the defendant Frank Payne? A. Yes I am.

Q. What relation are you? A. Half brother.

Q. Do you have the same mother or the same father? A. Same mother, different father.

Q. Where is your home located with reference to the defendant's home? A. Out, well, about 15 steps apart.

Q. Are they next door to each other? A. Yes.

Q. Were you in Pine Bluff on the night of October
231 4th when Mr. Robertson was killed? A. I was.

Q. When did you learn that your brother had been arrested—I am talking about this brother Frank? A. 12:15, about 12:15 Wednesday.

Q. State whether or not you went to the City jail to try to see your brother? A. I did.

Q. When did you go? A. I don't remember what day but it was before Friday.

Q. It was before Friday? A. It was before Friday.

Q. Were you permitted to see him? A. I wasn't.

Mr. Branton: That's all.

Cross Examination

By Mr. Mullis:

Q. Who did you see at the city jail? A. Who did I see at the city jail?

Q. Yes. A. I just asked permission,—I first went to the Sheriff's office and I talked with the Sheriff, and after I talked with the Sheriff, at the same time he was after my brother James—they had him and they kept him all
232 night and he was after him at the same time.

Mr. Mullis: That's all.

Re Direct Examination

By Mr. Branton:

Q. Do you know any officer that you talked to at the police station? A. No sir, I don't know.

Mr. Branton: That's all.

Mr. Mullis: That's all.

Witness Excused

233 FRANK ANDREW PAYNE, the defendant, a witness upon his own behalf, having been first duly sworn, testified in chambers, as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. State your name. A. Frank Andrew Payne.

Q. How old are you Frank? A. 19.

Q. Where did you live on October 4th, 1955? A. 805 Birch in Pine Bluff.

Q. When were you arrested Frank by the city police? A. October 4, 1955.

Q. October 4th was on Tuesday? A. I was picked up on the 5th.

Q. What was the day of the week you were arrested? A. Wednesday sir.

Q. About what time of the day were you arrested? A. A. About 11:00 o'clock.

Q. In the morning or at night? A. In the morning.

Q. Where were you when you were arrested? A. At the Bluff City Lumber Company.

Q. Were you employed there? A. Yes, I was.

Q. Normally what time did you get off for dinner? A. 12:00 o'clock.

234 Q. Did you get your dinner at 12:00 o'clock that day? A. No sir, I didn't.

Q. Where were you taken after you were arrested? A. Taken to the city jail.

Q. Now state whether or not they gave you any dinner or supper or any kind of meal at the city jail on Wednesday afternoon? A. No sir, they didn't.

Q. Where were you when the other prisoners were served, if they were served? A. I was in Chief Young's office.

Q. What time did they get you up on Thursday morning? A. 6:00 o'clock.

Q. State whether or not they had you remove your clothing? A. They did sir.

Q. Did they then take you somewhere? A. They taken me to Little Rock sir.

Q. Did they give you breakfast before you left the city jail? A. They didn't sir.

Q. When they took you to Little Rock state whether or not you had any shoes on or socks or anything on your feet? A. I didn't have sir.

Q. Did you stop in route to Little Rock? A. Stopped at Don Lusby's for 10 or 15 minutes.

Q. Who all was in the car? A. Sergeant Buck Halsell and Chief Norman Young.

Q. Did you get out of the car at Don Lusby's? A. I didn't, sir.

Q. Did the other men get out? A. Yes sir, they did sir.

235 Q. Were you left alone in the car? A. Were sir.

Q. Were you handcuffed? A. Were sir.

Q. Was anybody guarding you? A. Not as I know of sir.

Q. What time did you arrive in Little Rock? A. About 7:30.

Q. Where were you taken in Little Rock? A. I was taken to the State Police Department.

Q. Did they give you anything to eat when you got there? A. No they didn't sir.

Q. What did they do with you at the State Police Headquarters? A. Give me a lie detector test sir.

Q. Were there any threats made to you while you were in Littel Rock? A. Well, there was some profanity used.

Q. There was some profanity directed at you? A. It were sir.

Q. Did you finally get some shoes? A. I did sir.

Q. Where were you when they gave you shoes? A. I was, I don't recall the room.

Q. Was this at the State Police Headquarters? A. Yes sir, it was.

Q. Were they your own shoes? A. No sir, they wasn't.

Q. What time of the day was it when they finally gave you some shoes? A. About 4:30.

236 Q. Did they give you dinner or anything to eat up at little Rock? A. I got a sandwich at 1:00 o'clock.

Q. Do you recall who gave you the sandwich? A. Chief Norman Young.

Q. What time was it when you got back to Pine Bluff? A. It was about 6:00 or 6:30.

Q. What was done with you then? A. I was locked up upstairs.

Q. For how long? A. All night if I am not mistaken, I am not sure.

Q. Were you at any time taken to Dumas? A. Yes I were sir.

Q. When were you taken to Dumas? A. I was taken to Dumas Thursday night.

Q. Was it the same night you got back from Little Rock? A. I think it were sir.

Q. Do you know why you were taken to Dumas? A. Chief Norman Young said he thought it would be better to go because he thought it might be a mob there.

Q. Did anybody interfere with you in the jail at Dumas? A. Yes there were sir.

Q. Do you know who it was? A. No sir, I don't—it was an officer, night officer.

Q. What did he do Frank, what time did you get to the jail now at Dumas? A. I got to the jail approximately about 8:30, maybe a quarter to 9:00.

237 Q. Did you sleep that night Frank? A. Not very much sir.

Q. What kept you awake? A. I was questioned by the officer.

Q. Concerning what? A. He was asking me different questions, you know, why did I do what I did and he was asking me about did I do it. He knew about the colored boy in Mississippi and he said he would be there.

Q. Who would be there? A. That he would be there when they hung me.

Q. What did he talk about? A. He was the people that told me about it.

Q. What did he talk about—did he talk about himself? A. No sir, he didn't personally anyone—he just said he would be there when they hung me.

Q. State whether or not it appeared to you that the person in question had been drinking? A. Had sir.

Q. Did you report that abuse to Sergeant Halsell the next morning? A. I did sir.

Q. Did Sergeant Halsell make any statement to you concerning it? A. He said he would get on him about it.

Q. What was this statement the man said to you about hanging somebody? A. Well, he was questioning me as I said before, he was questioning me had I confessed that

I had did it and I told him, "yes, I had," he asked me what was the reason for doing it and so I told him I didn't
238 know, I told him I didn't have a reason, so, he said, he asked me did I know that it would, that I would be hung—he said did I know that I would be hung—he said that he would be the first one there when they got ready to hang me.

Q. When was this Frank? A. This was the night of, if I am not mistaken, the 6th.

Q. What day of the week was it? A. It was Thursday night.

Q. State whether or not this was before you made the confession in Chief Young's office?

Mr. Mullis: If the court please, he just stated that and I think the record will show it.

Mr. Branton: He stated what he told the man—I am asking him now whether or not it was before, (interrupted)

The Court: Let's have that read to see what he said.

Court Reporter: "Q. What was this statement the man said to you about hanging somebody? Answer. Well, he was questioning me as I said before, he was questioning me had I confessed that I had did it and I told him, 'yes, I had;' he asked me what was the reason for doing it and so I told him I didn't know, I told him I didn't have a reason, so, he said, he asked me did I know that it would, that I would be hung, he said did I know that I would be hung—he said that he would be the first one there when they got ready to hang me."

Mr. Branton: Now my question now is whether or not he had confessed—the other question, his reply was what he had told the man down there.

The Court: I see.

Q. Frank, state whether or not at the time you were in jail at Dumas, what you have testified to was on Thursday night, you had already confessed? A. I hadn't sir, I don't think.

239 Q. What time were you picked up by Sergeant Halsell the next morning? A. I was picked up between 10:00 and 10:30.

Q. What day? A. On Friday morning.

Q. Now did he get you something to eat? A. Yes he did sir.

Q. Where? A. I can't recall the restaurant, but he got me a glass of milk and some ham and eggs.

Q. Had you had any breakfast in jail at Dumas? A. I had.

Q. You had? A. Yes sir.

Q. The meal you had in jail in Dumas, state whether or not other than the sandwich you have testified about that you received in Little Rock, you had been given any food since you were arrested on Wednesday morning? A. I got a sandwich in Little Rock, one hamberger, and a coke, in Little Rock.

Q. On what day? A. On Wednesday.

Q. Now Wednesday or Thursday? A. I got the sandwich and coke in Little Rock, it was on Wednesday,—Thursday, I am sorry—on Thursday.

Q. What day were you arrested? A. I was arrested Wednesday at 11:00 A. M, if I am not mistaken.

Q. What time did you arrive in Pine Bluff on Friday? A. On Friday I arrived about 1:30 if I am not mistaken sir.

240 Q. Did you come straight to the police station? A. No sir, I didn't sir.

Q. Where did you stop? A. I stopped on 17th and Ohio, between there and the yard of the Rose Oil Company.

Q. How long were you out there? A. I would say roughly a half an hour.

Q. Was there any conversation over the radio? A. Yes, were.

Q. What was the nature of the conversation, if you recall? A. Chief, I mean Sergeant Buck Halsell, he was trying to contact Chief Young.

Q. Did you hear any of the conversation? A. At the present time I didn't, he didn't get in contact with him.

Q. Do you know why he didn't bring you on to jail? A. No sir, I didn't, not then, shortly after some more officers arrived.

Q. You mean arrived where? A. Out there at the Rose Oil Company.

Q. Did any conversation take place in your presence? A. Well, he gotten out of the car where I were and went over to his car.

Q. Could you hear the conversation? A. No sir, I couldn't sir.

Q. Were you then brought to the jail? A. About a half an hour later.

Q. Were you locked up? A. Yes sir, were.

241 Q. On Wednesday night were you in jail? A. I were.

Q. What jail? A. City jail sir.

Q. Do you know whether or not any members of your family were arrested? A. I do sir.

Q. On that same night? A. Yes sir.

Q. What members of your family were arrested? A. My brother, two of my brothers.

Q. What is your brother's name? A. James Davis, and two of his kids.

Q. How old are his kids? A. Well, the oldest one is about 13 if I am not mistaken, 12 or 13, and the other one is 10 if I am not mistaken.

Q. Was there any other members of your family arrested? A. E. D. Davis and one of his kids, Jeremyer.

Q. Did you know that? A. I know that.

Q. Were they brought to the same jail where you were? A. They were sir.

Q. State whether or not an officer or anybody said anything concerning the members of your family? A. Yes they did sir.

Q. Do you know who said it? A. Yes I do sir.

Q. Who was it? A. Chief Norman Young.

Q. What did he tell you? A. He told me that I might as well come on and confess before it was over with

242 he were going out and get the whole family including my mother.

Q. On Friday after you were brought back from Dumas and locked up who was the first person to come to your cell? A. Chief Norman Young if I am not mistaken sir.

Q. Did you have any conversation with Chief Young? A. Yes I did sir.

Q. What did he say to you? A. Chief Norman Young came up, I was locked up upstairs and Chief Norman Young came up and he told me that I had not told him all of the story—he said that there was 30 or 40 people outside that wanted to get to me, and he said if I would come in and tell him the truth that he would probably keep them from coming in.

Q. Did you then agree to go down and tell him? A. Yes I did sir.

Q. Where did you go? A. I went in Chief Norman Young's office.

Q. Was anybody else in there? A. No there wasn't sir.

Q. Did you propose to tell him what had happened? A. Yes I did sir.

Q. Were you interrupted in your testimony? A. I were sir.

Q. By what? A. Someone knocked on the door.

Q. Did the Chief answer the door? A. Yes he did sir.

Q. Did he make any,—do you know who was at the door? A. No I did not—he steps outside.

243 Q. Could you hear his conversation? A. Well, I heard him say, "He is fixing to confess now," and he would like to have me alone.

Q. Did you then complete your confession to Chief Young? A. Yes I did sir.

Q. Now did you after that make another oral confession in the presence of Sheriff Norton and Sergeant Halsell? A. Yes I did.

Q. How much later was it? A. It was approximately roughly I would say a half an hour.

Q. Now Frank why did you decide to make a confession? A. Well, as a matter of fact lawyer Branton I was more than afraid because Chief Norman Young had already told me that there was 30 or 40 peoples outside and the way he stated it, if I hadn't, if I didn't make the confession that he would let them in, from the conversation, from the way that he told me.

Mr. Branton: Your witness.

Cross Examination

By Mr. Mullis:

Q. Did you make a statement at the jail in Chief Young's office? A. Yes I did sir.

Q. Was it the truth what you told them? A. No sir, it wasn't sir.

244 Q. You have stated that Mr. Halsell took you to Dumas and brought you back? A. Yes he did sir.

Q. You stated that he got you back here to the best of your knowledge about 1:30, is that correct? A. Yes sir.

Q. You stated he stopped out here about the Rose Oil Station and spent about 30 minutes, is that correct? A. Well more than that.

Q. More than that? A. Yes sir.

Q. How much more than that? A. I would say it is about an hour and a half because I sat there at least 40 minutes before these officers arrived, and he gotten out of the car and went and talked with them at least 30 minutes.

Q. Then about 1:30 when you got back you stayed there about an hour and a half? A. Yes.

Q. That would make it two or 3:00 o'clock then wouldn't it when you left there? A. Somewheres along there.

Q. Then you said, where did you go from there? A. Came to the City jail sir.

Q. Didn't you, as a matter of fact, go out and show them where some money was? A. It was on Saturday sir.

Q. It was on Saturday when you showed them where the money was? A. Yes sir.

245 Q. But it was the day that Sergeant Halsell brought you back from Dumas? A. No sir, it was on Saturday.

Q. As a matter of fact, that is where you went from out at the Rose Oil Company Station, isn't it a fact that that is the place you left to go get this money in the piano? A. To my knowledge sir it was on Saturday.

Q. I did not ask you that question—I asked you wasn't it after he brought you back up here, didn't you leave from that place where you waited for the officers to go get this money? A. If I am not mistaken sir we came to the jail sir.

Q. Then did you go get this money from the jail? A. It was on Saturday when we went—we didn't go that afternoon.

Q. That you came back from Dumas? A. Yes sir.

Q. But it was about 3:00 o'clock when you came to the jail? A. Yes.

Q. I believe you said while ago it was about 30 minutes after that when you gave him the statement, gave this statement; you remember the statement being taken over there don't you? A. Yes sir, I do.

Q. There were quite a few people at the jail? A. Yes sir, there was.

Q. They were not all police officers were they? A. No sir, they wasn't.

Q. You say that the statement that you made over to Sergeant Halsell was not the truth? A. No sir.

246 Q. What is the truth?

Mr. Branton: Now, I object to that, Your Honor.

Mr. Mullis: Is the Court going to rule on it?

Mr. Branton: I ask the Court to rule.

Mr. Mullis: On what grounds do you object?

Mr. Branton: This question here is as to whether or not he made the confession voluntarily.

The Court: That's right—don't go into that phase.

Mr. Mullis: I think that's all.

Re Direct Examination

By Mr. Branton:

Q. Frank, did you have a watch—were you wearing a watch? A. No sir.

Q. You are just guessing at the time? A. Yes sir, but I looked at the clocks wherever we would be if one was.

Mr. Branton: That's all.

Re Cross Examination

By Mr. Mullis:

247 Q. You were looking at the clocks wherever you would be and that is the way you established time? A. Yes sir.

Mr. Mullis: That is all if the Court please.

Mr. Branton: That is all for the defendant.

Witness excused

The Court: Is that all?

Mr. Mullis: Yes sir.

The Court: Is that all for you?

Mr. Branton: Yes sir.

Mr. Branton: The defendant renews the objection to the admission of the confession on the grounds, first, that the confession has not been identified—there has been no confession offered here—not a single witness has been presented any alleged confession to identify the said confession or to determine whether or not it is one and the same statement as that taken or assigned or seen by them, and, second, the objection is to the fact that the State has

failed on their burden of proof that the confession was obtained voluntarily.

The Court: I haven't seen the confession Mr. Mullis, I rather think, (interrupted)

Mr. Mullis: I would be happy to put it in at this time.

The Court: Yes sir.

248 BUCK HALSELL, a witness upon behalf of the State, recalled, testified further in chambers, as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. You are the same Sergeant Halsell who has testified several times already in this case? A. Yes sir.

Q. You testified that you took a statement from the defendant? A. Yes.

Q. On the 7th of October? A. Yes sir.

Q. Do you have that statement with you at this time? A. I do.

Q. You have that statement since it was signed by the defendant? A. I have.

Q. Would you produce that statement please sir? Would you like to see the statement?

Mr. Branton: Well, I assume it is the original from the copy you permitted me to have. All right.

Mr. Mullis: Would the Court like to see the confession?

The Court: Is this the statement that you testified about while ago? A. Yes sir.

Mr. Mullis: Now, if the Court please, shall we introduce that?

The Court: Yes sir, have him read it.

Mr. Mullis: Just read it Sergeant Halsell. (Copy of same is attached hereto, marked for identification Plaintiff's Exhibit No. 10. See page No. .) A. "Statement of Frank Andrew Payne, as made to Norman
249 Young, Chief of Police, Pine Bluff, Arkansas; Harold Norton, Sheriff of Jefferson County, Pine Bluff, Arkansas, and Sergeant Buck Halsell, of Arkansas State Police, in the office of Chief of Police, Norman Young, at Pine Bluff, Arkansas, on October 7, 1955. Questions by Sergeant Halsell:

Q. What is your full name? A. Frank Andrew Payne.

Q. To start with, I would like to introduce myself, and tell you who I am. I am Sergeant Buck Halsell, of the State Police, and this is Mr. Norman Young, Chief of Police, this is Mr. Bill Miles, City Editor of the Pine Bluff Commercial, and this is Sheriff Harold Norton, and this is Mr. Pat Mullis, Prosecuting Attorney, and this is Geleve Grice, who is a business man here in Pine Bluff. As I understand it, you want to make a statement in regard to the death of Mr. J. N. Robertson, that occurred in Pine Bluff, Arkansas, on October 4th, 1955, is that correct? A. Yes sir.

Q. I want to advise you first that you don't have to make a statement, that any statement you may make can be used for or against you in a court of law, and that you are entitled to counsel, if you desire one. Do you still want to make this statement? A. Yes sir.

Q. How old are you? A. 19."

This first page is signed by Frank Andrew Payne.

"Q. Where do you live? A. 805 Birch.

Q. In Pine Bluff? A. In Pine Bluff.

Q. How long have you lived in Pine Bluff? A. 250 Since 1938.

Q. By whom were you employed on October 4, 1955?" The "55" there had been an erasure across it and the defendant initialed that part with "F. A. B."

"A. By Mr. J. N. Robertson, Bluff City Lumber Company.

Q. How long had you worked for Mr. Robertson before this date? A. Two weeks and four days.

Q. Do you know where the Bluff City Lumber Company is located? A. 3016 West 6th.

Q. Were you working at this Bluff City Lumber Company on October 4, 1955? A. Yes sir, I were.

Q. Were you at the Bluff City Lumber Company at 6 P. M. on that day? A. Yes sir, I were.

Q. On October 4, 1955? A. Yes sir.

Q. When Mr. Robertson was hurt or killed? A. Yes sir.

Q. Now, go ahead and tell me just what happened? A. I locked the back door of the building, and pulled the tools in from out" there is a mark through there and the defendant initialed that. "of the right of way and I came

inside the building and picked up an iron rod, and struck Mr. Robertson on the head and he fell on the floor." The word "floor" was inserted by me in the presence of the defendant and he initialed it. He signed his name "Frank Andrew Payne" to that page. "and I hit him five or six times more, and I taken the money from the cash drawer and I left out of the building and went south on
251 Birch and dropped the iron rod in a ditch where some water were, and then I went home. Shortly afterward, my nephew came over to my house. I gave him the money, change rather, that I taken from the cash drawer. I wrapped it in an old shirt and he taken it home with him. It was about Thirty or Forty Dollars; I didn't count it.

Q. How long had you been thinking about hitting Mr. Robertson? A. That afternoon.

Q. That afternoon? A. Yes sir.

Q. You hadn't thought about it at any time previous to that afternoon? A. No sir.

Q. That afternoon is all? A. Yes sir.

Q. I would like for you to describe the weapon you used in hitting Mr. Robertson? A. It is a twelve or fourteen inch rod.

Q. When you first hit Mr. Robertson where were you standing? A. In front of the desk.

Q. Where was Mr. Robertson sitting? A. On a stool across in front of me, behind the desk.

Q. That was behind the desk? A. Yes sir.

Q. The first lick you struck Mr. Robertson, did he fall to the floor? A. Yes, he did.

Q. Then what did you do? A. I come around the counter and hit him several times" That is the end of page
252 3 and it is signed by "Frank Andrew Payne." "more.

Q. Then what happened? A. I removed the money from the cash drawer, and I turned out the lights and left and went home.

Q. Frank, I'll ask you if you searched or took anything from Mr. Robertson's pockets? A. I didn't take a thing from his pockets.

Q. I'll ask if you took anything from the safe? A. I didn't touch the safe.

Q. Do you know whether or not the safe was open? A. Yes sir, the safe was open.

Q. Frank, the contents of this statement are true and correct to the best of your knowledge? A. Yes sir.

Q. I would like to ask if you have been promised anything in the way of a reward, leniency, or have been threatened by any officer? A. No sir.

Q. Have you been mistreated in any way by any officer since you have been here? A. No sir, I haven't.

Q. And you make this statement free and voluntary? A. Yes sir." That is signed by "Frank Andrew Payne" and dated October 7, 1955. Witnesses: Norman Young, Chief of Police, Pine Bluff, Ark.; Harold Norton, Sheriff of Jefferson County; Bill Miles, City Editor, Pine Bluff Commercial; Geleve Grice, A. M. & N. College; Buck Halsell, Sergeant Arkansas State Police—Dumas, Arkansas.

Witness Excused

253 HAROLD NORTON, a witness upon behalf of the State, recalled, testified further in chambers, as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. Sheriff, you have been on the stand and testified about the statement made by Frank Andrew Payne—I hand you herewith such statement and ask you if that is the statement that you witnessed signed by Frank Andrew Payne? A. That is.

The Court: All right.

Cross Examination

By Mr. Branton:

Q. Is this your initial Sheriff Norton? A. That is my initial.

Mr. Branton: That's all.

Witness Excused

254 NORMAN YOUNG, a witness upon behalf of the State, recalled, testified further in chambers, as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. You are the same Norman Young who has testified previously in this case? A. Yes sir.

Q. Just a few minutes ago you testified about a statement made by Frank Andrew Payne in your office? A. Yes sir.

Q. On October 7th? A. Yes sir.

Q. I hand you herewith a statement and ask you to examine the statement and see if that is the statement he signed? A. Yes sir, it is.

Q. What purports to be your signature as a witness appears on the left-hand side corner of this confession, is that your signature? A. It is.

Q. You did witness the signature of Frank Andrew Payne to this statement? A. I did.

Mr. Mullis: That's all.

Cross Examination

By Mr. Branton:

255 Q. Chief can you testify of your own knowledge that is the same thing that Frank Payne testified to? A. Yes sir, it is.

Q. You did not take it down in shorthand? A. I did not.

Q. Can you testify that is word for word the same thing he testified to? A. It is.

Q. Do you remember each and every word that was said Chief Young? A. I remember enough of it to know that is it.

Q. Do you remember enough of it to know whether or not it is the same as what he said word for word? A. Maybe not word for word what he had talked to me about, but it is word for word to the statement that he had made to the stenographer.

Q. You can remember word for word what he said Chief Young? A. I won't say that I remember word for word.

Q. Then Chief you can not testify that is the same thing that Frank Payne testified to word for word of your own memory can you? A. That is the same thing that, (interrupted)

Q. That, (interrupted)
A. That is the same statement that he gave.
Mr. Branton: No further questions.
Mr. Mullis: No further questions.
The Court: I want to ask the defendant a question.
Mr. Branton: All right sir.

Witness excused.

256 FRANK ANDREW PAYNE, the defendant, a witness upon his own behalf, recalled, testified further in chambers, as follows, to-wit:

Questions Propounded

By the Court:

Q. How far did you go in school? A. Fifth grade.
Q. Can you read? A. Yes sir.
The Court: All right.

Witness excused.

The Court: You want to move that be what?
Mr. Branton: I want to renew my objection to the confession being admitted.

(Overruling of objection to Admission of Confession.)

The Court: The objection will be overruled.
Mr. Branton: Note our exceptions.
Mr. Mullis: We offer it as an exhibit at this time.

(Copy of same is attached hereto, marked for identification Plaintiff's Exhibit No. 10. See page No. .)

The Court, Counsel and the Defendant return to the court room in the presence and hearing of the Jury, where the following proceedings are had, to-wit:

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257 BUCK HALSELL, a witness upon behalf of the State, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. Your name is Buck Halsell? A. That's right.

Q. The same Buck Halsell who was on the stand before we recessed? A. Correct.

Q. Sergeant Halsell, I believe you stated that you were active in the investigation of the murder of Mr. J. N. Robertson? A. That's right.

Mr. Branton: I am going to object to that question, it hasn't been established there was a murder yet—I object to that line of questions Your Honor.

Mr. Mullis: If the Court please, I believe it was established in his opening statement.

The Court: Go ahead.

Q. Sergeant Halsell, during that investigation did you interrogate this defendant? A. I did.

Q. At any time during that investigation did this defendant make a statement to you? A. He did.

Q. Was that statement reduced to writing? A. It was

Q. Was it read by this defendant? A. It was.

258 Q. Was it signed by this defendant? A. It was.

Q. Sergeant Halsell, I want to ask you were any promises of immunity or reward made to this defendant? A. It was not.

Q. Or was he abused in any manner to secure this statement? A. He was not.

Q. Was he threatened in any manner in order to secure this statement? A. He was not.

Q. Sergeant Halsell, I hand you a written statement and I wish you would examine that and see if that is the statement that this defendant made to you? A. It is.

Q. State whether or not he has signed that statement and whether or not he signed each individual sheet of it? A. He has signed this statement and each individual sheet of it.

Q. Who was present, if you recall, at the time this statement was made? A. Mr. Harold Norton, Sheriff of Jefferson County. Mr. Norman Young, Chief of Police at Pine Bluff. Mr. Bill Miles, City Editor of the Pine Bluff Commercial. Mr. Geleve Grice, who is a colored man from out at A. M. & N. College.

Q. State whether or not those gentlemen you have just named signed that as witnesses to the signature of Frank Payne? A. They did.

259 Mr. Mullis: If the Court please, we would like to have the defendant read the confession at this time,—the, (interrupted)

The Court: Don't you want to bring the other witnesses in first?

Mr. Mullis: Take the witness.

Cross Examination

By Mr. Branton:

Q. Sergeant Halsell, were you present when the confession was made? A. I was.

Q. Do you know whether or not the defendant was supposed to have already confessed before he made the confession in your presence? A. He had not confessed to me.

Q. Did anybody tell you he had confessed? A. I was told that he wanted to make a statement.

Q. Sergeant Halsell, when did you first come into the investigation? A. On the morning of the 5th.

Q. Do you recall the day of the week? A. No, I am sorry, I don't.

Q. To refresh your memory the killing was on a Tuesday night, is that right? A. It was on the 4th.

260 Q. I believe that the calendar will show that was a Tuesday—it was the next morning that you entered the investigation? A. That's right.

Q. What day of the week was the confession made on? A. It was made on the 7th.

Q. Which would be on a Friday if I am correct? A. It was on the 7th of October.

Q. Do you know the time of the day the confession was made? A. In the neighborhood of 2:00 o'clock.

Q. When did you first see the defendant at all? A. The first time I saw him?

Q. Yes sir. A. It was on the afternoon of the 5th.

Q. Where was that? A. The city hall here in Pine Bluff.

Q. Did you have occasion to take the defendant to Little Rock for any purpose? A. I did.

Q. When was that? A. That was on the morning of the 6th of October.

Q. Where did you get the defendant from? A. The city jail in Pine Bluff.

Q. Was this before the confession was made? A. It was.

Q. What time in the morning did you pick him up? A. It was after 6:00 o'clock.

Q. Do you know—let me ask you this—state whether or not you had the defendant to remove all of his clothing before taking him to Little Rock? A. He had on clothes when he came out of the jail.

261 Q. State whether or not you had him take them off before he came out of the jail? A. I got them on the afternoon of the 5th.

Q. Did you take his shoes and socks away from him? A. I did.

Q. Did he have any shoes and socks on when you took him to Little Rock? A. He did not.

Q. Do you know whether or not the defendant was given any food or any breakfast before you took him to Little Rock? A. I couldn't answer that.

Q. Did you stop anywhere in route to Little Rock? A. I might have.

Q. Did you stop? A. I don't remember whether I did or not.

Q. State whether or not you recall stopping at Don Lusby's? A. I could have stopped there to buy gas.

Q. Did you get out? A. I could have.

Q. Who accompanied you on the trip? A. The defendant and Mr. Norman Young the Chief of Police.

Q. Did Chief Young get out? A. He could have.

Q. You just don't recall? A. I just don't recall.

Q. What time did you get to Little Rock? A. Shortly after 7:00 o'clock.

Q. Do you know whether or not the defendant was given anything to eat up there? A. He was.

262 Q. What was he given to eat? A. He ordered two sandwiches.

Q. What time of the day was that? A. That was around noon.

Q. Did you get them for him? A. I did.

Q. What was the purpose of taking him to Little Rock? A. For a lie detector test.

Q. Do you know whether or not he took the test? A. To my knowledge I didn't see it taken.

Q. What time did you get back to Pine Bluff? A. It was in the afternoon.

Q. Did you talk with the defendant during the day about this particular crime? A. I did.

Q. State whether or not you told him anything about it would go easy for him if he confessed it? A. I didn't make any such statement to him.

Q. State whether or not you subsequently took the defendant to Dumas, Arkansas? A. I took the defendant to Dumas on the late afternoon of October 7th.

Q. Where did you take him down to Dumas? A. I put him in jail at the city hall in Dumas.

Q. Why did you take him to Dumas? A. On recommendation from the Chief of Police and Sheriff Harold Norton.

Q. Do you know why they recommended it? A. Yes, I know why they recommended it.

Q. Why did they recommend it? A. Now it is what
263 they told me—they had received some telephone calls and they felt it would be best for him.

Q. What time did you pick the defendant up in Dumas to bring him back,—did you bring him back? A. I brought him back.

Q. When? A. The morning of the 8th.

The Court: Let me interrupt you a minute Sergeant Halsell—you say you have a statement he signed, did you take him to Dumas before he signed that statement or afterwards? A. After he signed the statement.

The Court: All right.

Q. State whether or not the defendant registered any complaint with you about anybody molesting him in the jail the night before? A. Not necessarily a complaint.

Q. Did he tell you? A. He told me one of the officers had come in and talked to him during the night and that I told him that I would talk to this officer about it, that he didn't have any business back there, this case wasn't any of his business to start with.

Q. What time did you get back to Pine Bluff? A. Around noon.

Q. Did you come straight to the police station? A. I did not.

Q. Where did you stop? A. Out at the intersection I guess it is 65 and I don't know what street is between the gas station, between the gas station and the drive-
264 in, the sandwich shop there.

The Court: Let me interrupt you. This is to go to this confession and I can't see if whatever transpired after the confession would be admissible at this time—this merely is for the purpose of determining whether or not this confession will be read to the jury.

Mr. Branton: Well, I would, of course, Your Honor please, I was under the impression the Court had already ruled it was going to the jury. Now, if the Court hasn't ruled on it I won't go into anything else on that, subject to the right to recall Sergeant Halsell later.

The Court: I don't think you ought to tell what the Court ruled in chambers—the Court has already passed on that. The purpose of going to chambers here is to keep that from the jury until the Court has determined the situation. Now then, you go into the same situation here—you make your proof as usual, as heretofore, but that is the purpose of going in chambers, is to keep any argument from the jury until the Court has made up its mind, therefore, I am saying what transpired after the confession, the alleged confession, is as I see it, doesn't go to whether or not it was proper.

Mr. Branton: May I talk to the Court privately sir?

The Court: Yes sir.

Mr. Branton: I guess we can do it right over here.

The Court: All right, go ahead.

Q. Sergeant Halsell, where did this alleged confession take place? A. In the Chief of Police's office here in Pine Bluff.

Q. How long before the defendant made the confession had it been since you had last seen him? A. Well,
265 I was with him shortly after 1:00 o'clock except for maybe a time or two that I was out of the office until he started his confession around two.

Q. Sergeant Halsell, do you know whether or not the defendant had already confessed to Chief Young before he made the confession in your presence? A. I do not.

Q. Who was with you when you went over to the jail? A. What jail?

Q. City jail for the confession, that is what we are talking about? A. Well, I went to the Chief of Police's office.

Q. Who was with you? A. Sheriff Norton.

Q. Was anybody else present at that time? A. Not that I know of—I don't recall, I don't think there were.

Q. Did the defendant make a confession then in the presence of the three of you? A. He did not.

Q. When did he make the confession in your presence? A. He indicated before the statement was taken that he wanted to make a statement and when the statement was taken, that was his confession to me.

Q. Who asked the questions? A. I did.

Q. Were they taken down by a reporter or a stenographer? A. They were.

Q. Do you know whether or not she took them down in shorthand? A. She did.

266 Q. Do you read shorthand? A. I do not.

Q. How long did it take you to question the defendant? A. It wasn't too long—for the actual minutes I couldn't tell you.

Q. Do you know whether it was as much as an hour? A. I don't think it was an hour.

Q. Was it as much as a half an hour? A. I don't know about that—it could have been.

Q. Did the stenographer type up the statement? A. As far as I know she did.

Q. Did she type it up in your presence? A. She did not.

Q. Did you ever see her any more that day? A. I did not.

Q. Then what happened to the statement that was made? A. Now what do you mean what happened to it?

Q. You say you called in a stenographer to take it down, is that correct? A. That is correct.

Q. You never saw her any more that day? A. I did not. I talked to her on the phone.

Q. Did she ever give you the statement? A. She did not give it to me personally, no sir.

Q. Did you ever get the statement? A. I did.

Q. How much later? A. After it was completed or she left the office over there?

Q. After the testimony was taken? A. I would esti-

mate, I don't know the exact time, I would say 30 or 35 minutes at the most.

267 Q. Is that supposed to be a copy of the statement? A. This is the statement.

Q. Sergeant Halsell, you say you don't read shorthand, is that correct? A. That is correct.

Q. The lady who took it down in shorthand didn't come back any more? A. I didn't see her.

Q. This was sent back to you? A. By an officer.

Q. Sergeant Halsell, can you testify as to your own knowledge that this is the exact statement word for word made by the defendant? A. As far as I am concerned that is the exact statement made by, (interrupted)

Q. Word for word? A. Word for word, by the defendant.

Q. You don't remember what he said word for word? A. I do not.

Q. Then how can you testify it was? A. Because the stenographer is a very competent stenographer that took it; as far as I am concerned it is word for word.

Q. Has the stenographer ever taken any shorthand for you before? A. She has not.

Q. Then how do you know it was taken by a competent stenographer? A. She was recommended very highly.

Mr. Mullis: The competency of the stenographer can be proven by her.

Mr. Branton: I don't doubt the competency of the stenographer, but I do to what Sergeant Halsell know of his own knowledge and I think I am entitled to show it.

Q. Sergeant Halsell, how many copies were given to you? A. I believe there is an original and five copies.

268 Q. State whether or not the defendant was furnished a copy of it? **A. He was.**

Q. Did he read it? A. He did.

Q. Did he read it aloud? A. He did not.

Q. Did he move his lips? A. I did not notice his lips.

Q. Then how do you know he read it? A. He said he read it.

Q. Was anybody else present? A. There was five.

Q. Did they all have copies? A. They did.

Q. Are you sure that each and every witness there had a copy? A. I am positive.

Q. How many persons were present? A. When the statement was signed or taken?

Q. Yes sir, or when it was signed? A. Five and the defendant.

Mr. Branton: No further questions.

Re-Direct Examination

By Mr. Mullis:

Q. Sergeant, you just said five and the defendant; how many people signed the statement as witnesses? A. Five and the defendant.

269 Q. Were there any other people present? A. Yes, you were there.

Q. Was anyone else there? A. Not that I recall.

Q. I will ask you whether or not the court stenographer, the woman you testified about, was there when the statement was taken? A. When the statement was taken she was—not when it was signed.

Q. Now, counsel for the defense has asked you if you removed the clothing from this defendant when you took him to Little Rock—did you remove any clothing from him? A. I did.

Q. What clothing did you remove? A. His shoes and socks, his pants and shirt.

Q. Why did you remove those? A. To be turned in for laboratory examination.

Q. You were questioned about the defendant's stating to you he had been molested in the cell at the jail at Dumas, was that, (interrupted)

The Court: Mr. Mullis, I believe the lawyers are not going into that, those affairs that happened after the confession.

Mr. Mullis: That's all, I withdraw the question.

The Court: That is when he testified it was at least.

Q. (Mr. Mullis, continuing) You testified that you questioned the defendant when the statement was made? A. I did.

Q. Was this questioning done in sequence and
270 without delay or not? A. It was taken down just as the questions and answers were given.

Q. Did you stop any length of time, any great length of time? A. No great length of time.

Mr. Mullis: That is all for right now Sergeant.

Witness Excused

271 NORMAN YOUNG, a witness upon behalf of the State, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Mullis:

Q. Your name is Norman Young? A. Yes sir.

Q. You have been on the stand before Chief Young? A. Here?

Q. Yes sir. A. In this trial?

Q. Yes sir. A. No sir.

Q. Where do you live? A. 2104 West 23rd, Pine Bluff.

Q. You are Chief of Police in Pine Bluff? A. Yes sir.

Q. How long have you been on the police force? A. Nine years.

Q. Chief Young, you have been active in the investigation of the murder of Mr. J. N. Robertson? A. Yes sir.

Q. Did you arrest this defendant? A. I did.

Q. Were you connected with the investigation all the way through? A. Yes sir.

Q. During this investigation please state whether or not this defendant made any statement to you in your presence? A. He did.

272 Q. Was that statement reduced to writing? A. It was.

Q. Please state whether or not at any time during your investigation any promises of immunity or of reward were made to this defendant or if he was threatened in any manner or if he was abused in any manner in order to get him to make this statement? A. He was not.

Q. Where was this statement taken? A. In my office.

Q. You say it was reduced to writing? A. Yes sir.

Q. Did the,—state whether or not the defendant later signed the statement? A. He did.

Q. State whether or not he read the statement before he signed it? A. He did.

Q. I hand you herewith an exhibit in this case purporting to be that statement—look at that and state whether or not that is the statement that he made and signed? A. Yes sir, it is.

Mr. Mullis: Take the witness.

Cross Examination

By Mr. Branton:

Q. Chief Young, is that the statement that he
273 made? A. That is the statement that he made.

Q. Do you remember exactly what he said? A. Well, not word for word, but that is the statement that he made.

Q. Then if you don't remember it word for word Chief Young, can you state that is the statement he made? A. Yes sir, that is the statement he made.

Q. When was Frank Payne first arrested Chief Young? A. Approximately 10:00 A. M. October 5th.

Q. Do you recall the day of the week? A. I believe it was a Wednesday morning.

Q. Where was he arrested? A. At the Bluff City Lumber Company.

Q. Was he working there at the time? A. I presume, yes.

Q. Who was with you when you arrested him? A. Captain Booher.

Q. State whether or not you had a warrant for his arrest? A. We did not.

Q. State whether or not after the arrest was made you took the defendant before a magistrate or judge? A. We did not.

Q. State whether or not he was told why he was being held? A. He was.

Q. Was the defendant questioned in your office on Wednesday afternoon? A. He was.

Q. How many meals do you give the prisoners in the city jail? A. Two meals in a day except the ones that is working.

274 Q. What time is the first meal? A. Approximately 8:00 A. M.

Q. What time is the last meal? A. Approximately 4:00.

Q. State whether or not the defendant was given a meal to your knowledge in the jail that day? A. I have no knowledge of that.

Q. Did you go with the defendant and Sergeant Halsell on Thursday morning to Little Rock? A. I did.

Q. What time did you get him up—get the defendant up? A. We left Pine Bluff approximately between 8:00 and 9:00 o'clock—I don't know exactly.

Q. Did you stop anywhere in route? A. At Pullen and Cedar.

Q. Is that at Don Lusby's? A. Yes sir.

Q. State whether or not you and Sergeant Halsell both left the car? A. It is possible—I don't remember.

Q. State whether or not any of Frank's people came to the jail trying to see him before he confessed? A. Not to my knowledge.

Q. Would you have permitted them to have seen him had they asked?

Mr. Mullis: If the Court please, the question is irrelevant.

Mr. Branton: Note the objection of the defendant.

Q. When was Frank Payne transferred to the county jail? A. On the afternoon of the 7th of October.

Q. When did the defendant first tell you he was
275 going to confess? A. Approximately 1:00 P. M. on the afternoon of the 7th.

Q. Now where were you at the time? A. At the time that he told me he was ready to confess he was in the jail in an upstairs cell and I was standing outside of the cell talking to him.

Q. Were any other officers present? A. There was not.

Q. State whether or not anything was said to the defendant to the effect that there would be 30 or 40 people there in a few minutes that wanted to get him? A. I told him that would be possible that would be that many—it was possibly there could be that many.

Q. Did you promise the defendant that he would have an opportunity to confess in private? A. I did.

Q. Did you then go down to your office? A. We did.

Q. Did he then proceed to tell you what had happened? A. He did.

Q. Was he interrupted in relating to you that information? A. He was.

Q. What interrupted you? A. A knock on the door.

Q. Who was at the door Chief Young? A. Sheriff Norton.

Q. Anybody else? A. Sergeant Halsell was on the sidewalk.

Q. Was anything said there to Sheriff Norton? A. I advised Sheriff Norton that Frank had,—was giving me a rough idea of what had taken place out there and
276 I had promised him it would be in private.

Q. Did Frank know who was at the door? A. I am not sure.

Q. Did the defendant then finish his story roughly to you privately? A. He did.

Q. Did you then permit Sergeant Halsell and Sheriff Norton to come in? A. After I consulted Frank and got his approval.

Q. Did Frank then relate or make an oral confession to you and Sergant Halsell and Sheriff Norton? A. He did.

Q. Chief Young, Sergeant Halsell has just testified that he did not—can you explain the difference between his testimony and yours? A. It was similar to the same thing that I had gone over with him prior to that—in other words, it wasn't a complete, I am sure it wasn't a complete statement—it was some questions asked.

Q. State whether or not prior to the confession any other members of Frank Payne's family were arrested in connection with the investigation of this case? A. They were.

Q. State whether or not his brother James Davis was arrested? A. He was.

Q. Was he held in jail all night? A. He was.

Q. Did you have a warrant for his arrest? A. We did not.

Q. Did you bring down two of the minor children
277 of James Davis's for questioning? A. After they had volunteered to come down.

Q. How old were the two children who volunteered Chief Young? A. I don't remember their exact ages—I believe it was 8 and 11 or 8 and 12 or 13—I don't remember their exact ages.

Q. Where was the father at that time? A. I am not positive now which, (interrupted)

Q. I am talking about James Davis? A. He had been out in the country, I don't, (interrupted)

Q. James Davis is the one you testified was held in jail? A. Is he the father of the two boys?

Q. Yes sir. A. He wasn't at home at the time, he was driving a truck hauling cotton pickers.

Q. State whether or not you had went to another brother's home and arrested him or brought him down to jail, who was already in bed asleep, Wednesday night for questioning? A. Not to my knowledge.

Q. State whether or not you told the defendant that before it was over with you were going out and get everybody in the family including his mother to find the truth? A. I did not.

Q. Chief Young, state whether or not on your return from Little Rock with Sergeant Halsell, whether or not Sergeant Halsell made the statement to the defendant that if he would go ahead and tell the truth about it that he would only get five or six years on account of his age? A. He did not.

Mr. Branton: I believe that's all.

278 Re Direct Examination

By Mr. Mullis:

Q. Did you testify why you took him to Little Rock Chief Young? A. No sir.

Q. Why did you take him up there? A. For questioning.

Q. Is that the only reason you took him up there? A. Well, that, and then to get a statement if we could.

Q. You have testified that he was transferred to the city, to the county jail on the 7th, do you remember the day the statement was taken? A. Yes sir.

Q. What day was that? A. It was on the,—the statement or confession? On the afternoon of the 7th.

Q. Was he transferred to the county jail that day? A. He was carried to the county jail and later transferred to Dumas.

Q. From the county jail? A. Yes sir.

Mr. Mullis: I just wanted to clarify that sir. That is all for right now.

Witness Excused

* * * * * * * * * * *

296 BUCK HALSELL, a witness upon behalf of the State, recalled, testified as follows, to-wit:

Further Direct Examination

By Mr. Mullis:

Q. You are the same Buck Halsell that has been on the stand several times already in this case? A. Yes sir.

Q. Sergeant Halsell, I hand you herewith the statement you have testified about and I will ask you if that is the statement you just had a few minutes ago when you testifield? A. It is.

Mr. Mullis: If the Court please, we would like to introduce this statement into evidence at this time.

Mr. Branton: Note the objections of the defendant.

The Court: Okay. Objection overruled.

Mr. Branton: Save our exceptions.

* * * * * * * * * * *

358 Mr. Mullis: If the Court please, the State rests.

The Court: What says the defendant?

Mr. Branton: Your Honor, the defendant has some motions to make and I suggest that we go in chambers.

The Court: All right. Take a recess for five minutes and don't discuss the case.

(The Court, Counsel, and Defendant retire to Private Chambers out of the presence and hearing of the Jury, where the following proceedings are had, to-wit:)

Motions for Directed Verdicts and Denials Thereof

Mr. Branton: The defendant at this time moves for a directed verdict of not guilty as to the charge of first degree murder.

The Court: Motion denied.

Mr. Branton: Note our objections.

Mr. Branton: Defendant moves at this time for a directed verdict of not guilty as to the charge of second degree murder.

The Court: Motion overruled.

Mr. Branton: Note our objections.

Mr. Branton: Defendant moves at this time for a directed verdict of not guilty upon the charge of voluntary homicide, I am sorry, voluntary manslaughter.

The Court: Overruled.

Mr. Branton: Note our objections.

Mr. Branton: The defendant at this time notes that it is a quarter of five and the defendant requests that the Court recesses until tomorrow morning to allow the defense attorney time to consult with his client and further prepare for the defense of the defendant in this case.

359 The Court: I think we ought to finish this testimony this evening if we can—if we can't, well, all right; I think you are entitled to a few minutes, but not the rest of the day and tonight.

Mr. Mullis: If the Court please, I object to that motion —I would like to get the testimony in for this reason, there are several witnesses here now who are being held and are holding up another Court.

The Court: The Court is familiar with that. If you want a few minutes we will get out and let you have your client and let you do what you want to, but I think we should finish this testimony this afternoon, this afternoon or tonight, if we can.

Mr. Branton: I would like a few minutes.

The Court: I rule we are going to finish the testimony if we can.

Mr. Branton: I object to the ruling of the Court as to the recess.

(The Court, Counsel and the Defendant return to the Court Room in the hearing and presence of the Jury, where the following proceedings are had, to-wit)

The Defendant, in order to sustain the issues upon his own behalf, introduced Witnesses and Testimony, as follows, to-wit

363 MRS. S. M. WIMBERLY, a witness upon behalf of the defendant, having been first duly sworn, testified as follows, to-wit:

Direct Examination

By Mr. Branton:

Q. Will you state your name please? A. I am Mrs. S. M. Wimberly.

Q. Where do you live Mrs. Wimberly? A. At 1201 North Hazel Street.

Q. Here in Pine Bluff? A. Yes.

Q. What is your occupation? A. Teacher.

Q. Where are you employed at the present time? A. Coleman High School.

Q. How long have you been employed at Coleman High School? A. This is my fifth term.

Q. How long have you been teaching? A. 15 years.

Q. Do you know this defendant Frank Andrew Payne? A. Yes I do.

Q. Where did you know the defendant? A. In the school room—he attended school there in the year 1951 and 1950, 1950-51.

Q. Now, was he a student of yours? A. Yes he was.

Mr. Mullis: If the Court please, there has been some indication that this witness has been in the,—I would
364 like to determine that prior to the time that he can do any further questioning, if he wants to ask her if she has been in here—I don't want to waive it.

Q. (Mr. Branton, continuing) Mrs. Wimberly, there is some question as to whether or not you have been in the court room while the testimony was being taken in this case, I want to ask you whether or not you have been in this court room while the testimony was being taken in this case? A. I walked in just before they adjourned.

Q. Just before they adjourned? A. Just before they adjourned.

Q. Was anybody on the stand? A. It seems like they was saying something about adjourning when I got in.

Q. Was anybody in the chair? A. When I came in, I don't know what was being done, all I know, just before you all walked out, and I just walked out.

The Court: She hasn't been here very long?

A. No, I came from school.

The Court: Go ahead. The Court is going to permit her to testify.

Q. Mrs. Wimberly, at the time you taught Frank did you teach all of his grades? A. You mean all of his subjects?

Q. Yes ma'am. A. Yes I did.

Q. What grade? State whether or not to your knowledge you were Frank's last teacher at that school? A. I was Frank's last teacher at that school—he dropped out of school before the term was out, in fact, Frank was of
365 age and they had to skip him from the 5th grade to the 7th grade—he was 15 years of age and they had to skip him from the 5th to the 7th; of course, he weren't there too much.

Q. After he was in the 7th grade? A. That's right.

Q. Do you know why Frank was promoted to the 7th grade? A. They promoted him on an age basis because he was slow learning—he was very slow and lazy.

Q. Have you at my request examined the records at your files in your registry at that time to determine Frank's grades? A. Yes, before I left the school I sent off for his record—I have it if you would like to see it.

Q. Will you get your records please? A. I have a copy of it, but it is in the registry—here is a copy.

Q. Did you file the record with the registrar? A. It is filed at the school—this is from the record.

Q. What grade is that for, the 7th grade or the 5th grade? A. The 7th grade.

Q. State whether or not Frank had the ability to learn subjects in comparison to the ability of the other students? A. Well, according to the reports from the other teacher that worked with me, he did not, that is why he was promoted to the 7th, he didn't have the ability to do it and he stayed there so long.

Q. Did you have any occasion to observe the attitude of the other students towards Frank because of his scholastic ability? A. Yes.

Mr. Mullis: If the Court please, I let him go
366 awfully far with that, he is going too far, what other students' attitude was towards him. Of course, if your Honor please, that is not relevant.

Mr. Branton: I think it goes to determine his mentality.

Mr. Mullis: His mentality is not an issue in the case.

Mr. Branton: I am putting it in issue.

Mr. Mullis: I am afraid you are a little late.

Q. Will you state the various subjects on which you graded Frank in his last year? A. He had spelling.

Q. What is the—on the record there what is the first subject on which you graded him? A. I have science here.

Q. Did you grade Frank in the subject of science? A. Yes.

Q. Will you state those grades? A. F.

Q. Do you have any other grades for science? A. Nothing but F's.

Q. For what periods did you grade him? A. A period of a month.

Q. How many times did you grade him in science? A. He has four grades.

Q. In science—is that for one particular year? A. Yes.

Q. What were the four grades for science? A. F.

Q. You mean four F's? A. Yes.

Q. What is the next subject you graded him in?

367 A. Geography.

Q. How many times did you grade him in geography? A. Four.

Q. What were those four grades? A. D and C and D and F.

Q. What was the next subject you graded Frank in? A. Language.

Q. How many times did you grade him in language? A. Four.

Q. What were those four grades? A. D plus, F and D and F.

Q. What is the next subject you graded him in? A. Spelling.

Q. Did you grade him four different times in spelling? A. That's right. You want the grades?

Q. What were the grades? A. D, D, F, F.

Q. What is the next subject you graded him in? A. Well, it shows on the card literature, but I call it reading. D, C, F, F.

Q. What is the next subject you graded him in? A. Well, that's all.

Q. State whether or not you graded him on deportment? A. Yes, his deportment.

Q. How many times did you grade him on deportment? A. Four.

Q. What were those grades? A. A's.

Q. Four A's? A. Yes.

368 Q. Did you grade him on anything else? A. No, that's all.

Mr. Branton: Your witness.

Cross Examination

By Mr. Mullis:

Q. What do you mean by his behavior? A. The way he conducts himself in school.

Q. The way he conducts himself in school? A. Yes.

Q. What grade did you say you taught? A. Seventh.

Q. You taught the seventh grade? A. Yes.

Q. You did not teach the fifth grade? A. No I didn't.

Q. How much time did you say these grades you talked about covered? A. How many months?

Q. Yes. A. Four.

Q. Four months? A. Yes.

369 Q. Do you know how many days he was in school during that time? A. I will have to look on the card.

Q. Would it show on there how many days he was there? A. Yes.

Q. During the four months. How many days did he attend? A. The third month he attended 11 days, number belonging 17. The fourth month he attended 17, number belonging 17, he attended 12. The fifth month he attended 15 days, number belonging was 20. The sixth month he attended 13 days, number belonging was 20—then he dropped out.

Q. He wasn't too regular in attendance was he? A. Not too regular.

Q. Failing to attend that few days he would have to be pretty smart to make pretty good grades? A. Well, the average student just missed a few days in a month.

Q. You mean, he missed 11, or was there 11 days out of 17, he missed 6 days that month; the next time there 12 days out of 17, he missed 5 days? A. Yes.

Q. The next day he was there 15 out of 20, missed 5 days? A. Yes.

Q. The next day he was there 13 out of 20, missed 7 days? A. Yes.

Q. Add those, 6, 5, 5, and 7. That would be 23 would it not? Add those, would you please. That would be 23 days he missed in four months? A. I think.

370 Q. You say an average student you grade with that kind of attendance, (interrupted) A. An average student should be able to make at least a C.

Q. You say he was promoted from the 5th to the 7th because he couldn't learn? A. On age basis and he couldn't learn.

Mr. Mullis: That's all.

Mr. Branton: That's all.

Witness Excused

* * * * * * * * * *

377 Testimony of FRANK ANDREW PAYNE (recalled) Direct

Q. Did you know how much money was in the wallet at that time? A. I didn't sir.

Q. Why did you take the wallet? A. Well, I don't know sir—well, at the time I had in mind getting away after I had, because of the fact of what had happened, and so as I left the building I taken the rod and I dropped it beside the ditch; so I went home.

Q. Did you come back down to the scene that night Frank? A. I did sir.

Q. Did you go to work the next morning? A. I did sir.

Q. It has been testified here that you cleaned up the blood and other debris there, is that true? A. That's right, sir.

Q. When were you first arrested Frank? What night? What day of the week was that that Mr. Robertson was killed? A. It was Tuesday, October 4th I believe sir.

Q. When were you arrested Frank? A. I was arrested Wednesday.

Q. Do you know when you were arrested Wednesday? A. 11:00 o'clock.

Q. In the morning? A. In the morning.

Q. Were you at work? A. I was at work sir.

Q. Did you have a lunch hour? A. I did have sir.

Q. What was your regular lunch hour? A. 11:00 o'clock sir.

378 Q. 11? A. I mean 12:00 o'clock.

Q. On Wednesday were you supposed to go home to dinner or did you bring your lunch? A. I am supposed to go home for dinner.

Q. Did you get home for dinner? A. I did not sir.

Q. I believe you said you were arrested at 11:00 o'clock? A. I was sir.

Q. Now, that afternoon, Frank, did they give you any food in jail? A. I didn't get any sir.

Q. Where did they lock you up that night? A. Downstairs sir.

Q. In the city jail? A. City jail.

Q. Did they get you up Thursday morning? A. They did sir.

Q. What time did they get you up Frank? A. I would say 6:00 o'clock sir.

Q. State whether or not you were required to take off your clothes? A. I was sir.

Q. Were you taken anywhere from jail? A. Were sir.

Q. By whom? A. By Sergeant Buck Halsell and Chief Norman Young.

Q. Now where did you go from the city jail? A. I went from the city jail to Little Rock.

Q. What time did you leave the police station
379 Thursday morning? A. I would say 6:15 or 6:20 sir.

Q. Did they give you breakfast before you went to Little Rock? A. They didn't sir.

Q. Did you stop anywhere in route to Little Rock? A. I did sir.

Q. Where did they stop? A. Stopped at Don Lusby's Service Station.

Q. How long were you out there at Don Lusby's Service Station? A. I was there 15 or 20 minutes sir.

Q. Did you get out of the car? A. Did not sir

Q. Did Sergeant Halsell or Chief Young get out of the car? A. They did sir.

Q. What time did you get to Little Rock? A. I would say roughly 7:30.

Q. Did they give you any breakfast after you got there? A. Did not sir.

Q. Up until that time, that was around 7:00 o'clock Thursday morning? A. That's right.

Q. When was the last time you had eaten any food prior to that time? A. It was that Wednesday morning before I left home sir.

Q. What did they do with you in Little Rock? A. They gave me a lie detector test.

Q. State whether or not any threatening remarks were made to you? A. There were some profanity used in the conversation by Sergeant Buck Halsell.

380 Q. Was the profanity directed at you? A. Yes sir, were sir.

Q. What time did you get back to Pine Bluff Thursday—did you come back to Pine Bluff? A. I did sir.

Q. On your way back, Frank, state whether or not either Chief Young or Sergeant Halsell made any promises to you as to what might happen if you would confess? A. Sergeant Buck Halsell did sir.

Q. What did he say to you? A. Sergeant Buck Halsell, he told me, he said I might as well come clean, he says, with the truth, he said, "the most you will get out of it is five or six years."

Q. Did he tell you why you would only get five or six years? A. He said, "under the circumstances of your age."

Q. Were there any other remarks? A. Well, no sir, it was no more than some more profanity used, that is after I told them I didn't know.

Q. Was it dark when you got back to Pine Bluff? A. It were.

Q. While you were in Little Rock that day did they give you anything to eat? A. One hamburger and a coke sir.

Q. What time? A. 1:00 o'clock.

Q. When you got back to Pine Bluff you were locked up in jail? A. Were sir.

Q. For how long? A. It was a short period of time sir.

381 Q. What was done with you then? A. I was carried to Dumas.

Q. Dumas, Arkansas? A. Right sir.

Q. Who carried you to Dumas? A. Sergeant Buck Halsell.

Q. Do you know why they carried or he carried you to Dumas? A. Well, Chief Norman Young advised him that he thought it would be a good idea because he figured there would be a mob there that night so he suggested that Sergeant Buck Halsell would carry me to Dumas.

Q. When you got down to Dumas, Frank, did they lock you up in the jail at Dumas? A. They did sir.

Q. Did they give you supper or anything to eat when you got there? A. Did not sir.

Q. You had the hamburger, and had you had any food since Wednesday morning? A. Well, as I recall I got a bag of peanuts and a bar of candy sir.

Q. Did somebody give you that? A. Yes sir, some person brought it up to me.

Q. On Wednesday night while you were in the city jail state whether or not to your knowledge any members of your family were arrested? A. Were sir.

Q. Who to your knowledge was arrested and brought to the city jail? A. James Davis, my half brother and James Davis was there, who is the father of the two kids James R. Jr., and Curtis Lee Davis.

382 Q. Was any other member of your family arrested? A. Were—my brother E. D. Davis and his kid Jeremyer Davis.

Q. Frank, prior to this confession did you ask to make a telephone call or to see anybody? A. I did sir.

Q. What were you told? A. I was told that I could not make a telephone call under 72 hours investigation.

Q. Did anybody say anything to you concerning other members of your family? A. Yes, were sir.

Q. Who said that? A. Chief Norman Young sir.

Q. What did he tell you Frank? A. He told me that if I didn't tell the truth he was going out and get my whole family including my mother.

Q. When you got down to the jail Thursday night in Dumas was there an officer on duty? A. There were sir.

Q. State whether or not you were permitted to sleep that night? A. Not very much sir.

Q. Why were you not permitted to sleep very much—what interfered with your sleep? A. I was kept awake by an officer.

Q. Was he an officer from Pine Bluff? A. No sir, he wasn't sir. He was an officer of the Dumas jail I suppose.

Q. How did he keep you awake Frank? A. He was asking me different questions about the case.

383 Q. State whether or not it appeared to you that he had been drinking? A. It had sir.

Q. Did you see any brutality exhibited on the part of that officer? A. I did sir.

Q. Was that brutality, physical brutality directed towards you? A. It were—right in front of the cell where I were.

Q. I mean, did he do anything to you physically? A. No he didn't sir.

Q. What did he say, I mean, do? A. They brought a fellow in for, he was drunk, he had been driving and there had been a wreck and they brought him to jail and he had two small ones about like that and he insisted he would carry, (interrupted)

Q. What "he" are you talking about? A. This officer in Dumas. He insisted this fellow they brought in insisted that he carry the children in jail with him and the officer told him he could not take the kids with him, so finally it caused an argument about wanting to keep the kids with him and that officer, I suppose he got mad and he started beating this guy, (interrupted)

Q. What did he hit him with? A. A blackjack.

Q. In your presence? A. It were sir.

Q. That was the same officer questioning you? A. It were sir.

Q. State whether or not he used any threatening
384 remarks or profanity towards you? A. Well, yes sir.

Q. Did he say anything to you about the crime? A. He did sir.

Q. What did he say Frank? A. He asked me why did I do it what I did and I told him I wouldn't know sir.

Q. Did he say anything else? A. He did sir.

Q. What else? A. He said he would be there when they hung me.

Q. Did he say anything that would lead you to believe that a mob was after you? A. He did sir.

Q. What did he say? A. He even mentioned about this colored kid in Mississippi about what happened to him.

Q. Did he say anything to you? A. Well, he did sir.

Q. About what would happen to you? A. He did sir.

Q. What did he say to you? A. Well, from his conversation and his own words he said I would be hung.

Q. What time did you leave the Dumas jail? A. I left the Dumas jail I would say about 10:00 o'clock.

Q. Was that on Friday,—you mean 10:00 o'clock in the morning? A. Right.

Q. Did Sergeant Buck Halsell pick you up? A. He did sir.

385 Q. Did you complain to Sergeant Halsell about the treatment you received the night before in the Dumas jail? A. I did sir.

Q. What time did you get back to Pine Bluff? A. I got back to Pine Bluff I would say at 1:00 or 1:30 sir.

Q. Were you brought straight to the jail? A. I wasn't sir.

Q. Where did you stop? A. We stopped at the Rose Oil Company, I mean in the yard of it, of the Rose Oil Company.

Q. Which Rose Oil Company? A. On 17th and Ohio.

Q. How long were you out there Frank? A. I was out there about an hour and a half sir.

Q. Do you know why you were being held out there? A. Well, not exactly sir.

Q. Was there any radio conversation going on? A. It were sir.

Q. Was it concerning you in any manner? A. Sergeant Buck Halsell was trying to get contact with Chief Norman Young to see if everything were clear before they came in.

Q. Then did he bring you to jail? A. They did sir.

Q. Was that the city jail? A. Yes sir.

Q. When you got to city jail, Frank, were you locked up again? A. Were sir.

386 Q. Upstairs or downstairs? A. Upstairs sir.

Q. Did anybody come up and say anything to you? A. Chief Norman Young sir.

Q. Was there any other officer present when he came there? A. Wasn't.

Q. What did he say to you Frank? A. Chief Norman Young said thirty or forty people were outside wanting to get into me and he asked me if I wanted to make a confession he would try to keep them out.

Q. Did you then agree to make a confession? A. I did sir.

Q. Did you go down to his office? A. I did sir.

Q. Did you start to make your confession? A. I did sir.

Q. Were you interrupted in making that confession? A. Were sir.

Q. What was the cause of that interruption? A. Well, someone come knocked on the door.

Q. Did Chief Young go to the door? A. He did sir.

Q. Did you hear any conversation? A. He stepped outside sir and he said,—he stepped outside and he said he was fixing to start o make his statement.

Q. Did he bring him or ask him to come in there? A. I don't think so.

Q. At the time did you know who was out there? A. I did not sir.

Q. Did you then go ahead and make a confession? A. I started sir.

387 Q. Was it immediately after that that you made a confession in the presence of a stenographer? A. Right sir.

Q. Frank, why did you make that confession? A. Well, I was more than afraid.

Q. Afraid? A. Were sir.

Q. What caused you to be afraid Frank? A. Well, it were the conversation that Chief Norman Young was talking, what he said, 30 or 40 peoples outside, then from the conversation of this officer down at Dumas, him, the way he was talking, in other words, he says peoples, it were somebody outside and were someone that was outside wanting to get into me.

Q. Frank, have you ever been involved in any kind of an accident? A. Were sir.

Q. When and where did that take place? A. In Indianapolis, Indiana.

Q. What year? A. If I am not mistaken sir, 1952 sir.

Q. What was the cause of that accident? A. Well, I was working for Fred Williams, Lincoln and Mercury dealer, 850 Mardrine at the time and there was a boy worked there that I didn't know him very well, but anyway, he taken off with a car, (interrupted)

Q. Now, Frank, state whether or not you have ever received any kind of physical injury? A. Yes sir.

Q. What was the cause of that physical injury? A. I was in a car wreck once.

388 Q. Were you hurt in that wreck? A. Were sir.

Q. Where did the wreck take place? A. If I am not mistaken it were Mobile, Alabama sir.

Q. When was that accident? A. If I am not mistaken it was 1953 before I went to Indianapolis.

Q. Was any other member of your family hurt in the accident? A. I was alone at the time, but there was a friend of mine with me.

Q. Frank, when you struck Mr. Robertson did you have any intention at that time of killing Mr. Robertson? A. I did not sir.

Q. Did you ever have any intention of killing him? A. No I did not sir.

Q. Did you have any intention of taking any money out of the place? A. I did not sir.

Mr. Branton: Your witness.

* * * * * * * * * * *

413 (The Court and Counsel retire to private chambers out of the presence and hearing of the Jury, where the following proceedings were had, to-wit)

Colloquy Re Negroes on Jury

Mr. Branton: The defendant moves at this time for a directed verdict of not guilty.

The Court: Motion overruled.

Mr. Branton: Save our exceptions.

Mr. Branton: Judge, can we let the record show that the jury selected was composed entirely of white male citizens and that there was only one Negro on the panel from which

the jury was selected and that the one Negro on the panel was excused for cause on account of his being opposed to capital punishment.

The Court: Let the record so show.

Mr. Eilbott: Wasn't there two on the panel but one of them died?

Mr. Branton: Yes.

The Court: Yes, let that be shown also.

* * * * * * * * * * * *

443 IN THE SUPREME COURT OF ARKANSAS

May Term 1956

FRANK ANDREW PAYNE, *Appellant*,

vs.

THE STATE OF ARKANSAS, *Appellee*.

Appeal from Jefferson Circuit Court, No. 4846

Judgment — November 5, 1956

This cause came on to be heard upon the transcript of the record of the circuit court of Jefferson County and was argued by counsel, on consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby in all things affirmed with costs.

It is further considered that said appellee recover of said appellant all her costs in this court, in this cause expended, and have execution thereof.

444 IN THE SUPREME COURT OF ARKANSAS

No. 4846

FRANK ANDREW PAYNE, *Appellant*,

vs.

THE STATE OF ARKANSAS, *Appellee*.

Appeal from Jefferson Circuit Court

AFFIRMED

Opinion — Delivered November 5, 1956

PAUL WARD, Associate Justice

Appellant, Frank Andrew Payne, was charged by information with the murder of J. M. Robertson on October 4, 1955. A jury found him guilty of murder in the first degree and fixed his punishment at death by electrocution. For a reversal, appellant sets forth a number of objections and alleged errors in his Motion for New Trial. We have given careful consideration to each one of the above assignments, some of which will be disposed summarily, but we will discuss hereafter in some detail only those assignments of error which appear to have merit and those upon which appellant places the greatest emphasis.

1. The trial court overruled appellant's motion to quash the information, and two grounds are here relied on to show error.

(a) It is contended by appellant that Amendment 21 to the Constitution of this State, substituting an information by the prosecuting attorney for an indictment by the grand jury, violates the 5th and 14th Amendments to our Federal Constitution. This question has already been passed on contrary to appellant's contention (as admitted by
445 appellant) in the case of *Penton* v. *State*, 194 Ark. 503, 109 S.W. 2d 131, and affirmed in *Smith & Parker* v. *State*, 194 Ark. 141, 109 S.W. 2d 131. We now assert, as was stated in the latter mentioned case in referring to

the former mentioned case, that: "There is no reason at this time to re-examine and restate our conclusions reached in the case above. That opinion is controlling on this case."

(b) Notwithstanding the above, the appellant makes the further contention that the information in this case should have been quashed because it is undisputed that it was issued before there had been a preliminary hearing. In support of this contention appellant apparently relies on Ark. Stats. Sec. 43-806 which provides that when a defendant has been held to answer at a preliminary examination the prosecuting attorney may file an information. The section referred to is a part of Act 160 of the Acts of 1937 which was passed to implement Amendment No. 21 referred to above and was not meant to be a limitation on the powers granted by the amendment. This court definitely settled the question against appellant's contention in the *Penton* case, supra, at page 513 of the Arkansas Reports, where it was stated:

> "The principle distinction between provisions of Sec. 1 of Amendment 22 to the Constitution of Arkansas, and the provision of California's Constitution authorizing prosecutions under information, is that as a condition precedent to the validity of prosecutions on information in California, there must have been examination and commitment by a magistrate. Omission of this requirement from the Arkansas Amendment does not deprive the accused of the rights of due process guaranteed under the Constitution of the United States."

Our Amendment No. 21 (referred to above as 22)
446 says nothing about a preliminary hearing.

2. It is ably and earnestly insisted that the trial court erred in admitting in evidence a confession made and signed by appellant. This argument is based on the contention that appellant was mistreated and that he was induced by fear and intimidation to make the confession. After careful consideration we are unable to agree with appellant.

Robertson was killed at about 6:00 on Tuesday, October 4, 1955, and appellant was arrested the next morning and placed in the city jail at Pine Bluff. He was taken early the next morning, October 6th, to Little Rock for a lie detector test and was returned to Pine Bluff that afternoon and replaced in the city jail. The next day, October 7th, at about 1:00 P.M., he was taken to the county jail and his confession was made, signed and witnessed at about 2:00 P.M. Later that same afternoon he was taken, presumptively for security purposes, to the county jail at Dumas where he spent the night but was returned to Pine Bluff on the following morning. On examination appellant testified that he was not given anything to eat, that his clothes were taken away from him, that (in effect) he was threatened with the result of mob violence if he did not confess and that some of his relatives were arrested. He stated that while in the jail at Dumas he was reminded of the fate of a Negro boy in Mississippi. We here note that appellant was a Negro, 19 years of age.

A great deal of testimony was taken relative to the alleged threats and mistreatment, and the circum-
447 stances attending the confession. A careful consideration of this testimony convinces us that the confession was properly allowed in evidence. Several witnesses were present when the confession was made and they all testified that, at no time, were there any threats or any mistreatment of the appellant. In the confession itself appellant states that he was not in any way mistreated. The State Police Sergeant who took appellant to Little Rock admits that they took his shoes and socks off before they left Pine Bluff and that they removed his pants and shirt after he arrived at Little Rock, all for the purpose of laboratory examinations. The sheriff admits that shortly before the confession was actually given he merely informed appellant that there were several people outside the jail. His explanation was that appellant had already indicated he wanted to make a confession and the sheriff thought it would be better to have the confession made in private, having in mind the safety of appellant. Any statement that might have been made to appellant while in jail at Dumas could not have influenced his confession which had already been made the day before. Before the trial

court decided to admit appellant's confession in evidence he heard voluminous testimony, in chambers, from all of the officers and people who had been in contact with appellant during his period of confinement before the confession was made. All of them deny that appellant was mistreated in any way or that he was in any way threatened. This procedure was approved in *McClellan* v. *State*, 203 Ark. 386, 156 S.W. 2d 800, and we are convinced that the confession was properly introduced in evidence.

It is true that some of appellant's relatives were
448 arrested soon after he was taken into custody but, as explained, this was done in an effort to prevent the money which appellant was supposed to have taken from the deceased from being disposed of.

3. While Sergeant Buck Halsell was on the stand the prosecuting attorney asked this question: "Sergeant Halsell, I believe you stated that you were active in the investigation of the murder of J. M. Robertson. A. That's right." The attorney for appellant objected to the question on the ground that "it hasn't been established there was a murder yet." The prosecuting attorney replied that "I believe it was established in his opening statement." The court then instructed the attorneys to go ahead and there were no further objections. We are not convinced that this incident materially prejudiced the rights of appellant or that it calls for a reversal. It is reasonable to suppose that the jury understood that the prosecuting attorney was merely asking the witness if he had been active in the investigation of the death of Robertson.

4. After the State had rested its case late in the afternoon the court recessed for 5 minutes in order to take up some motions presented by the defendant. After this was done the attorney for appellant made this statement:

> "Mr. Branton: The defendant at this time notes that it is a quarter of five and the defendant requests that the Court recess until tomorrow morning to allow the defense attorney time to consult with his client and further prepare for the defense of the defendant in this case.
>
> The Court: I think we ought to finish this testimony this evening if we can—if we can't, well, all right; I

think you are entitled to a few minutes, but not the rest of the day and tonight.

449 Mr. Mullis: If the Court please, I object to that motion—I would like to get the testimony in for this reason, there are several witnesses here now who are being held and are holding up another Court.

The Court: The Court is familiar with that. If you want a few minutes we will get out and let you have your client and let you do what you want to, but I think we should finish this testimony this afternoon, this afternoon or tonight, if we can.

Mr. Branton: I would like a few minutes.

The Court: I rule we are going to finish the testimony if we can.

Mr. Branton: I object to the ruling of the Court as to the recess."

Under this state of the record we see no error in the court's refusal to grant a recess until the following day. It will be noted that appellant's attorney gave no special reason for asking the court to adjourn other than to consult with his client and further prepare for his defense. It was not stated or shown in what way appellant would be prejudiced by the court's refusal to grant the recess. This court in the case of *Edwards* v. *State*, 171 Ark. 778, 286 S.W. 935, held that it was not error for the court to refuse a postponement of a trial for a few hours until some of defendant's witnesses should arrive where the defendant had announced ready for trial without such witnesses being present.

5. After both sides had rested, but before the case was submitted to the jury, late in the afternoon the court permitted the jurors to separate and go to their several homes. It is objected by appellant that this was error although he admits that it is a matter of discretion with the court. Ark. Stats. Sec. 43-2121 specifically provides: "The jurors, before the case is submitted to them, may, in the discretion of the court, be permitted to sepa-

450 rate . . . .". In *Hamilton* v. *State*, 62 Ark. 543, 36 S.W. 1054, this court said: "Permitting the jury in a murder case to separate before the case was finally submitted to them is not reversible error where no preju-

dice is shown." It is not disputed that no such prejudice is shown here.

In this connection it is also contended that the court did not properly admonish the jury before they separated, but we think no reversible error appears. This contention is based on Ark. Stats. Sec. 43-2122 which provides that before each adjournment the jury must be admonished by the court "that it is their duty not to permit any one to speak to or communicate with them on any subject connected with the trial, . . ." In this instance the court stated to the jury: "Remember, don't discuss the case and don't permit anyone to discuss it with you: . . ." It was not until after the jury had left the court room that appellant made any objection. It was only then that appellant's attorney made this statement: "For the record I want to object to the jury being permitted to separate for the night." We think the admonition given by the court was a substantial compliance with the statute. The record shows that the court had previously, on occasion of adjournment in this case, given the jury a full and complete admonition, and he started this one with the word "remember". If appellant thought the admonition given by the court was not sufficient, he should have so indicated at the time.

451 6. At the close of all of the testimony appellant made a motion for a directed verdict of not guilty which was overruled by the trial court and this is assigned as reversible error. In this connection the argument is made that the evidence is not sufficient to support the verdict of the jury. There is no merit in this contention.

We have already concluded that appellant's confession was properly introduced in testimony. In this confession he admitted that he took an iron rod, and hit the deceased over the head and knocked him to the floor and then hit him several more times, and then he took money out of the cash drawer. Even without this confession there is much evidence to support the jury's verdict. Evan Reed, an employee of the deceased at the Bluff City Lumber Company, testified that he left the company office about 5:30 P.M. on the day Robertson was killed, and that the deceased and appellant were the only ones there when he left. He returned 10 or 15 minutes after 6 o'clock and

found Robertson lying on the floor dead or dying. In a short while the officers found some of appellant's clothes at his residence located at 805 Birch Street with blood stains on them. Appellant pointed out to a witness where he got the metal rod and where he placed it after he had struck the deceased. When the officers took appellant to his home, appellant told them where they would find the money. He stated that it was hidden in a piano and upon searching the piano the officers found $444.00. The evidence shows that this was approximately the amount which
452 the deceased had in his office at the time. There can be no question, we think, about the sufficiency of the testimony to support the jury's verdict of murder in the first degree.

7. *Discrimination.* The point which appellant stresses forcibly and ably, and which merits the closest scrutiny, is that the Negro race was discriminated against in the selection of the jury panel which tried him. His motion to quash the jury panel, and testimony supporting the same, mentions two grounds upon which error is predicated in the court's refusal to grant his motion; (a) discrimination against his race in the selection of the jury commissioners, and (b) discrimination in the selection of the jury panel.

(a) There is no merit in appellant's contention that no Negroes were selected as jury commissioners at the term previous to the one at which he was tried, or for many years previous thereto. This question was decided by this court against appellant's contention in the case of *Maxwell* v. *State*, 217 Ark. 691, 232 S.W. 2d 982. At page 694 of the Arkansas Reports we said: "Appellant further contends that he was discriminated against within the meaning of the 14th Amendment because there were no Negroes on the jury commission. We know of no rule making this requirement and the suggestion must be rejected."

(b) In support of appellant's contention that his race was discriminated against in the selection of the jury panel which tried him, substantially the following facts were disclosed: Prior to 1947 and for many years no Negroes had been placed on the regular panels of the petit jury;
453 since 1947 29 Negroes had served as regular mem-

bers of the petit jury, during which years there were three panels on which Negroes served and the most that served any one year was 6; approximately 30 per cent of the qualified electors in Jefferson County are Negroes. In addition to this, testimony of the jury commissioners who selected the panel of jurors for the term at which appellant was tried was introduced. One commissioner stated he felt that he should not select any one for the jury that he did not know and that he was limited in his knowledge of the people whom he was trying to select: He further stated: "I have lived in this country for 57 years; I think I would be as well qualified to select either white or black as anybody else." "Q. Do you know very many Negroes who would be qualified for jury service? A. I think so." It appears that he actually recommended one of the two Negroes who was selected on the panel. The second commissioner stated that he knew quite a few colored people and that he had been doing business with them quite awhile although he knew that all of them would not be qualified or eligible for jury service. The third commissioner stated that he felt that there should be some Negroes on the panel but hadn't given any thought as to whether they should be selected on a proportional basis.

The argument is advanced that the above factual situation makes a *prima facie* showing of racial discrimination for many years previous to the date of the trial, citing the case of *Green* v. *State*, 222 Ark. 222, 258 S.W. 2d 56. 454 We do not agree. In the *Green* case it was shown that no Negro had been selected on the regular jury panel for the past 30 years, but that is not the situation here. It is shown by the testimony that the 29 Negroes who had actually served on the jury panel since 1947 did not include all the Negroes who had been selected for service. On the other hand it was shown that many others, the numbers undisclosed, had been selected but had not served for different reasons. The burden therefore was not on the State but on the appellant to introduce testimony showing discrimination.

We think the testimony tending to show discrimination in the case under consideration is weaker to sustain appellant's contention than that shown in the case of *Washington* v. *State*, 213 Ark. 218, 210 S.W. 2d 307, where the court

held that no discrimination existed. The cited case came to us from Jefferson County where it was tried in 1947 at a time when no Negroes had previously been selected for jury service. In holding that there was no discrimination the court, at page 223 of the Arkansas Reports, had this to say:

> "But the proof in this record shows that the three Negroes were members of the regular panel of petit jurors called in the present case. They were V. T. Price, R. D. Doggett and Prince Swaizer. They were members of the regular panel, and numbered 7, 10 and 12 in the examination of jurors for trial in this case. There is no evidence even tending to show that the jury commissioners selected these three Negroes or any other members of the jury panel for any purpose other than to truly comply with the law of the land."

455 Based on the testimony of the jury commissioners mentioned above appellant strongly insists that this case is controlled by *Cassell* v. *Texas*, 339 U.W. 282, and should therefore be reversed. Here again we are unable to agree with appellant's contention, because we think the two cases are distinguishable on the facts. In the *Cassell* case at page 287 the court makes clear the basis of its decision where it stated: "Our holding that there was discrimination in selection of the grand jurors in this case, however, is based on another ground. In explaining the fact that no Negroes appeared on the grand jury list, the commissioners said that they knew none available who qualified; at the same time they said they chose jurymen only from those people with whom they were personally acquainted." The court further said, at page 290, "The statements of the jury commissioners that they chose only whom they knew, and that they knew no eligible Negroes . . ., is discrimination in violation of petitioner's constitutional rights." In the case under consideration no such lack of knowledge is shown.

We have given careful consideration to the other objections, not discussed above, raised by appellant and find no ground for reversal in any of them. Appellant objected to the introduction of photographs which were shown to the jury on a screen but this was a matter which

rested largely in the discretion of the trial judge and we find no abuse of that discretion in this case. The same thing can be said in answer to appellant's objection to the introduction in evidence of certain articles of clothing and the iron rod heretofore mentioned. Appellant
456 stated that he was not allowed a public trial because several Negroes were not allowed to enter the court room. Following an objection by appellant's attorney in this connection the trial judge stated that he saw no vacant seats and overruled the objection. In the absence of testimony to the contrary we must assume that the trial judge was correct and that he did not abuse his discretion.

Finding no reversible error the judgment of the trial court is affirmed.

AFFIRMED.

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457 IN THE SUPREME COURT OF ARKANSAS

(Title Omitted)

Petition for Rehearing—Filed November 21, 1956

Comes the appellant, Frank Andrew Payne, and respectfully requests a rehearing of this Court's decision of November 5, 1956, in this cause on the following grounds:

This Court has erroneously held that the appellant did not make out a *prima facie* showing of racial discrimination in the selection of petit jurors so as to shift the burden of proof to the State to show that discrimination did not in fact exist. The appellant urges a re-examination of the cases cited on pages 34 and 35 of appellant's brief.

WHEREFORE, appellant prays that a rehearing of this cause be allowed and that the judgment of the lower court be reversed.

Respectfully submitted,

WILEY A. BRANTON
Attorney for Appellant

(File Endorsement Omitted)

458 IN THE SUPREME COURT OF ARKANSAS

Rehearing Petitions Denied—December 3, 1956

Petitions for rehearing were denied in the following cases:

* * * * * *

4846. Frank Andrew Payne v. The State of Arkansas

* * * * * *

460 SUPREME COURT OF THE UNITED STATES

No. 610 Misc., October Term, 1956

(Title Omitted)

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the State of Arkansas.

Order Granting Motion for Leave to Proceed In Forma Pauperis and Petition for Writ of Certiorari—April 8, 1957

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be and the same is hereby granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to questions 2 and 3 presented by the petition for the writ which read as follows:

> "2. Whether members of the negro race were systematically excluded or their number limited in the selection of the jury panel and of the Jury Commission.
>
> 3. Whether the petitioner's alleged confession was introduced into evidence after same had been illegally and unlawfully secured from him."

The case is transferred to the appellate docket as No. 894. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILED
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JOHN T. FEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 99

FRANK ANDREW PAYNE,

Petitioner,

vs.

STATE OF ARKANSAS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR THE PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 99

FRANK ANDREW PAYNE,

Petitioner,

vs.

STATE OF ARKANSAS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR THE PETITIONER

Opinion Below

The opinion of the Supreme Court of Arkansas (R. 131) is reported at 295 S. W. (2d) 312.

Jurisdiction

The judgment of the Circuit Court of Jefferson County, Arkansas, was affirmed by the Supreme Court of Arkansas, on November 5, 1956. Rehearing was denied December 3, 1956. Petition for Writ of Certiorari and Motion for Leave to Proceed in Forma Pauperis were granted on April 8, 1957. The printed record was received by petitioner's counsel on October 19, 1957. The clerk of this court, pursuant

to a request from petitioner under Rule 34 (5), entered an Order on November 12, 1957, extending the time for petitioner to file his Brief to November 25, 1957.

Statutes Involved

CONSTITUTION OF THE UNITED STATES—
14th AMENDMENT.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 18 U.S.C. Sec. 243.

Exclusion of jurors on account of race or color.—No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000. (June 25, 1948, c. 645, Sec. 1, 62 Stat. 696.)

ARKANSAS STATUTES (1947) Sec. 39-201.

Jury Commissioners—Selection—Oath.—Jurors in both civil and criminal cases shall hereafter be selected as follows: The circuit courts, at their several terms, shall select

three (3) jury commissioners, who shall not be related to one another by blood or marriage within the 4th degree, who possess the qualifications prescribed for petit jurymen and who have no suits in court requiring the intervention of a jury. The judge shall administer to the Commissioners the following oath: "You do swear faithfully to discharge the duties required of you as commissioners; that you will not, knowingly, select any person as a juror whom you believe unfit and not qualified; that you will not make known to anyone the name of the jurors selected by you, and reported on your list to the court, until after the commencement of the next term of this court; that you will not, directly or indirectly, converse with any one selected by you as a juror concerning the merits of any suit to be tried at the next term of this court until after said cause is tried or the jury is discharged." Jury commissioners shall receive $5.00 per day for their services.

ARKANSAS STATUTES (1947) Sec. 39-206.

Preparation of Lists of Grand Jurors and Alternates—Qualifications.—They shall select from the electors of the county sixteen (16) persons of good character, of approved integrity, sound judgment and reasonable information, to serve at the next term of the court as grand jurors, and when ordered by the court, shall select such other number as the court may direct, not to exceed nine (9) electors, having the same qualifications, for alternate grand jurors, and make separate lists of the same, specifying in one list the names of the sixteen (16) persons selected as grand jurors, and certify the same as the list of grand jurors; and specifying in the other list the names of the alternate grand jurors, and certifying the same as the list of alternates; said grand and alternate grand jurors shall be selected from all parts of the county.

ARKANSAS STATUTES (1947) Sec. 39-208.

Preparation of Lists of Petit Jurors and Alternates—Indorsement of Lists.—The Commissioners shall also select from the electors of said county, or from the area constituting a division thereof where a county has two or more districts for the conduct of circuit courts, not less than twenty-four (24) nor more than thirty-six (36) qualified electors, as the Court may direct, having the qualifications prescribed in Section 39-206 Arkansas Statutes 1947 Annotated to serve as petit jurors at the next term of court; and when ordered by the court, shall select such other number as the court may direct, not to exceed twelve (12) electors, having the same qualifications, for alternate petit jurors, and make separate lists of same, specifying in the first list the names of petit jurors so selected, and certify the same as the list of petit jurors; and specifying in the other list the names of the alternate petit jurors so selected, and certifying the same as such; and the two (2) lists so drawn and certified, shall be inclosed, sealed and endorsed "list of petit jurors" and delivered to the Court as specified in Section 39-207, Arkansas Statutes 1947, Annotated for the list of grand jurors.

ARKANSAS STATUTES (1947) Sec. 39-209.

Delivery of Lists to Clerk—Oath of Clerk and Deputies—Oath of Subsequently Appointed Deputy.—The judge shall deliver the lists to the clerk, in open court, and administer to the clerk and his deputies the following oath: "You do swear that you will not open the jury lists now delivered to you until the time prescribed by law; that you will not, directly or indirectly, converse with any one selected as a petit juror concerning any suit pending and for trial in this (court) at the next term, unless by leave of the court."

Should the clerk subsequently appoint a deputy in vacation, he shall administer to him the like oath.

ARKANSAS STATUTES (1947) Sec. 39-210.

Clerk to Deliver List to Sheriff—Summons by Sheriff—Return—Day of Appearance.—Within thirty (30) days before the next term, and not before, the clerk shall open the envelopes and make out a fair copy of the list of grand jurors, and a fair copy of the list of alternate grand jurors; also a fair copy of the list of petit jurors, and a fair copy of the list of alternate petit jurors, and give the same to the sheriff or his deputy, who shall, at least three (3) days prior to the first day of the next term, summon the persons named as grand jurors, and the persons named as petit jurors and alternate petit jurors, to attend said term on such day as the court shall have designated by order, as petit jurors, by giving personal notice to each, or by leaving a written notice at the juror's place of residence with some person over ten (10) years of age. The sheriff shall return said list, with a statement in writing of the date and manner in which each juror was summoned: Provided, That if no day for the appearance of the petit jurors shall have been fixed by order of court, they shall be summoned to attend on the second day of the term.

ARKANSAS STATUTES (1947) Sec. 39-212.

Nonattendance of Juror or Alternate—Fine.—If a juror or alternate, legally summoned, shall fail to attend, he may be fined any sum not less than one ($1.00) nor more than thirty dollars ($30.00).

ARKANSAS STATUTES (1947) Sec. 39-301.1.

Fees of Jurors.—Persons whose names appear on any legal and authorized Grand Jury or Petit Jury List of the respective counties of Arkansas, shall receive in addition to any other fees allowable now by law, other than under authority of said Act, No. 48 of 1947 (Section 39-301, Ark.

Statutes, 1947 Official Edition), the following per diem fees:

a. When such person or persons fail for any reason to attend court; None.

b. When such person or persons attend court and are excused by the Court for any reason from serving as a juror or jurors; Five Dollars ($5.00).

c. When such person or persons have been sworn touching their qualifications to serve as a juror or jurors and have been accepted by the Court as qualified: Seven Dollars and Fifty Cents ($7.50).

ARKANSAS STATUTES (1947) SEC. 43-601.

Proceeding When No Warrant Issued.—Where an arrest is made without a warrant, whether by a peace officer or private person, the defendant shall be forthwith carried before the most convenient magistrate of the county in which the arrest is made, and the grounds on which the arrest was made shall be stated to the magistrate, and if the offense for which the arrest was made is charged to have been committed in a different county from that in which the arrest was made, and the magistrate believes, from the statements made to him on oath, that there are sufficient grounds for an examination, he shall, by his written order, commit the defendant to a peace officer, to be conveyed by him before a magistrate of the county in which the offense is charged to have been committed; or, if the offense is a misdemeanor only, the defendant may give bail before the magistrate for appearing before a court or magistrate having jurisdiction to try the offense, on a day to be fixed by the magistrate and named in the bail-bond.

ARKANSAS STATUTES (1947) SEC. 43-605.

Procedure.—When a person, who has been arrested, shall be brought, or in pursuance of a bail-bond shall come, before a magistrate of the county in which the offense is charged to have been committed, the charge shall be forthwith examined; reasonable time, however, being allowed for procuring counsel and the attendance of witnesses. The magistrate before commencing the examination, shall state the charge and inquire of the defendant whether he desires the aid of counsel, and shall allow a reasonable opportunity for procuring it.

Questions Presented for Review

I

Whether due process of law guaranteed by the Fourteenth Amendment was denied petitioner—a mentally retarded 19 year old Negro youth with little education—by introduction into evidence of his "confession" made following an arrest without a warrant and without arraignment before a magistrate and following sustained interrogation with deprivation of food—punctuated by threats of mob violence—while he was held incommunicado from Wednesday morning until Friday afternoon and where several members of his family were arrested without a warrant and petitioner was threatened with the arrest of his mother.

II

Whether members of the Negro race were systematically excluded or their number limited in the selection of the jury panel and of the jury commission where no Negroes had been appointed to jury commission for over fifty years; where Negroes have represented only 4.3% of the persons called for jury service for the past 17 consecutive

terms in a county where Negroes comprise 50% of the total population and 30% of the qualified electors and where names were selected from Poll Tax lists on which the race of the electors is designated.

Statement of the Case

Petitioner has been sentenced to death following conviction for the crime of Murder In The First Degree (R. 48). The Supreme Court of Arkansas has affirmed this judgment (R. 131).

1. Events Which Preceded the Trial

J. N. Robertson, an elderly white lumber man, was found dead in his place of business in the City of Pine Bluff, Arkansas, on Tuesday, October 4, 1955. The petitioner is a 19 year old[1] Negro (R. 98) who actually went to the fifth grade in school (R. 102) but was promoted to the seventh grade on an age basis because he was slow learning (R. 119). The petitioner was arrested on Wednesday morning, October 5, 1955, by the city police of Pine Bluff who had no warrant of arrest (R. 63, 112) and held incommunicado under circumstances to be detailed below until he "confessed" on Friday afternoon.

2. Preliminary Motion to Quash the Jury Panel

The petitioner filed in proper time, his Motion to Quash the Panel of petit jurors for the October Term, 1955, of the Jefferson Circuit Court, alleging that he was a Negro and that no member of the Negro race had ever been selected as a jury commissioner in over fifty years in Jefferson County; and, that although some members of the Negro race had been called for jury duty since 1947,

[1] Petitioner was 19 at the time of the alleged crime.

that Negroes have been discriminated against by an arbitrary and inapportionate limiting of their number by the jury commissioners in violation of the Fourteenth Amendment to the Constitution of the United States.

The Arkansas Statutes provide for the appointment of a three man jury commission by the Circuit Judge prior to the beginning of each term of court[2] and the commissioners are required to select the panel from the electors of the county.[3] The County Clerk keeps the official record of qualified voters (R. 17). and the record reflects the race of the elector (R. 18) as is required by law[4] and the total number of voters in the county at the time of the trial was 19,452 of which, 5,774 were colored and 13,678 were white (R. 18) and this same approximate ratio has existed for the past three years (R. 18).

According to petitioner's exhibit No. 1, which was a certified copy of a population report of Jefferson County for the year 1950 as prepared by the Census Bureau, Jefferson County had a total population of 76,075 of which 37,792 were white persons and 37,835 were Negroes (R. 18).

Jury Commissioner Trulock could not recall a Negro serving as a Jury Commissioner (R. 8), that they were told to get some Negroes on the panel (R. 9), that he could not take anybody that he didn't know and that he was limited by his knowledge of the people whom he was trying to select (R. 10), and that he was not personally familiar with very many Negroes who might be qualified as jurors (R. 11). Neither of the other two Commissioners could recall a Negro ever having served

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[2] Ark. Stat., 39-201, Page 2 herein.

[3] Ark. Stat., 39-208, Page 4 herein.

[4] Ark. Stat., (1947) 3-227 requires that the color of the taxpayer be shown on the poll tax receipt record.

on the Jury Commission (R. 13, 16), and one admitted that he had race in mind when the panel was selected (R. 16).

The Circuit Clerk had never known of a Negro serving on the Jury Commission in Jefferson County (R. 19), and that he kept a record of the names of persons who have actually served on jury panels during the past ten years (R. 19). The Court invited the petitioner's attorney to take the stand to show the actual number of Negroes who have served on jury panels during the past ten years (R. 22), and his testimony revealed that the number of Negroes on each panel for the past 17 consecutive terms of Court has ranged from 0 to 6, the 6 having been reached at only one term and the average being less than 2 Negroes per term (R. 24, 25).

Nine Negroes who had formerly served as jurors testified that they had never heard of a Negro serving on the Jury Commission in Jefferson County and a study of their testimony reveals that at the time of trial their average age was 68 years and they had lived in the county an average of 41 years and most had never served on a jury until within the past three or four years (R. 28-38).

The Motion to Quash the Jury Panel was denied (R. 43), and the defendant was tried by an all White Jury (R. 129).[5]

3. Testimony Relating to Confession

The State sought to introduce an alleged confession into evidence and on objection by the petitioner, the Court and counsel retired to chambers out of the hearing of the jury where testimony relating to the confession was

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[5] There were two Negroes on the panel from which petitioner's jury was selected but one had died prior to the trial and the other was excused because he was opposed to capital punishment (R. 129-130).

had (R. 51). All of the witnesses for the state stated on direct examination that the defendant was not threatened or abused in any manner or promised any reward in consideration of his confession (R. 51, 63, 72, 76, 79, 84).

The petitioner took the stand in his own behalf (R. 88) and testified that he was 19 years of age and that he was arrested about eleven o'clock in the morning on Wednesday, October 5, 1955, while he was at work at the Bluff City Lumber Company and that he normally went home for dinner at twelve o'clock and missed his dinner because he was in jail and that he was not given any dinner or supper at the jail on the day of his arrest (R. 88), that he was awakened about six o'clock the following morning (Thursday) in order to remove his clothing and shoes and was then taken by car to Little Rock without breakfast by the Chief of Police and Sgt. Halsell of the State Police (R. 89); that he was taken to State Police Headquarters in Little Rock where he was given a lie detector test and that he was finally given some shoes about 4:30 (R. 89) but the record is silent as to when he was given clothing and the only food that he was given that day was a sandwich at one o'clock (R. 89); that he was returned to Pine Bluff about six or six-thirty in the afternoon and some time Thursday night was taken to Dumas, Arkansas,[6] by Sgt. Halsell where he was locked up in jail and kept awake most of the night by the jailer who questioned him and made threats that petitioner would be hung (R. 90); that he was given breakfast on Friday morning about ten-thirty and that other than the sandwich which he had on Thursday, this was the only food which he had been given since his arrest on Wednesday morning (R. 92); that two of his brothers and two of a brother's

[6] Dumas is approximately 45 miles southeast of Pine Bluff in Desha County.

children, ages ten and thirteen were arrested and brought to the City Jail at Pine Bluff and that the Chief of Police told Petitioner that he might as well confess or else his whole family would be arrested including his mother (R. 93); that later on Friday, Chief Young came to his cell and told him that there were thirty or forty people outside who wanted to get the petitioner and that if he would tell the truth that he (the Chief) would probably keep them from coming in; and that he then went to the Chief's office and made a confession (R. 94).

The petitioner's brother, a 43 year old preacher (R. 86), testified that he tried to see the petitioner at the City Jail before Friday but was not permitted to see him (R. 87). The petitioner's last teacher testified that he only went to the fifth grade but that he was promoted to the seventh grade because he was then fifteen years old and that he soon dropped out of school (R. 119), and that his grades were mostly D's and F's (R. 120).

Much of the petitioner's testimony was corroborated by the testimony of the State's witnesses on cross-examination. Sgt. Halsell admitted that the petitioner was taken to Little Rock without shoes (R. 56), and Chief Young admitted that petitioner was arrested without a Warrant (R. 63), that it was possible that petitioner had no supper on the day of his arrest (R. 64); that he did not know whether petitioner had breakfast the next morning before being taken to Little Rock (R. 65); that petitioner was never taken before a Magistrate or Judge (R. 65); that petitioner's relatives would not have been permitted to see him within 72 hours after his arrest (R. 66-67); that petitioner's brother and two of his brother's children were brought to jail for questioning as well as another brother and that he told petitioner that there might be thirty or forty people there in the next few minutes, just prior to the confession (R. 69).

Most of the witnesses for the State were people who had been brought in merely to witness the signing of the confession. After the hearing in chambers, the Court overruled the petitioner's objection to the admission of the confession into evidence, and substantially the same testimony was taken again in the presence of the jury (R. 102-130). The confession itself begins on page 97 of the record. The petitioner also took the stand in open court and stated that profanity was directed at him on Thursday while in Little Rock and that in returning the officer told him that if he would tell the truth, that "the most you will get out of it is five or six years" on account of "your age" (R. 124), and that he requested permission to make a telephone call following his arrest and was told that he could not call anyone within 72 hours (R. 125).

4. Petitioner's Defense

Petitioner took the stand and admitted that he struck the decedent, his white employer, with an iron bar, which apparently resulted in his death but that this was done only after the deceased had struck him following an argument, and that petitioner's action was done in the sudden heat of passion.

SUMMARY OF ARGUMENT

I

Confession

The introduction into evidence of petitioner's confession denied due process of law guaranteed by the Fourteenth Amendment because it was obtained after the petitioner had been arrested without a Warrant and held incommunicado from Wednesday morning until Friday afternoon, during which time he was deprived of food for long periods

of time and was taken out of the county to Little Rock for a lie detector test and was then taken to another city for safekeeping where he was threatened by the jailer who told petitioner that "he would be hung." The petitioner was denied the right to consult with a lawyer or members of his family, and two of his brothers and three of his nephews were arrested while petitioner was in the City Jail and the latter was threatened with the arrest of his whole family including his mother if he "didn't tell the truth." He was told by the Chief of Police approximately 30 minutes before his "formal confession" that there were 30 or 40 people outside the jail who wanted to get him and that if petitioner would tell the truth that he, the Chief, could probably keep them from getting in. At this point, the petitioner made his inculpatory statement. The totality of the circumstances that preceded this confession by the nineteen year old mentally retarded petitioner was a denial of due process.

II

Jury Discrimination

There was systematic exclusion of Negroes from the jury commission and from the jury panel in Jefferson County caused by a system of jury selection which relied wholly upon the jury commissioners' personal acquaintance, where commissioners knew few Negroes qualified to serve in a county where Negroes comprise 50% of the total population and 30% of the qualified electors and where the panel is selected from the poll tax record on which the race of the elector is designated. This system has resulted in no Negro serving on the jury commission in Jefferson County for at least 50 years and where Negroes have represented only 4.3% of the persons called for jury service for the past 17 consecutive terms of court and

where the petitioner was tried before an all white male jury and sentenced to death in the electric chair, in violation of the Constitution and laws of the United States.

ARGUMENT

I

Confession

Due process of law guaranteed by the Fourteenth Amendment was denied to petitioner, a mentally retarded 19 year old Negro youth, by introduction into evidence of his "confession" made following an arrest without a Warrant and prior to any arraignment following sustained interrogation with deprivation of food—punctuated by threats of mob violence—while being held incommunicado in jail from Wednesday morning until Friday afternoon, and where several members of his family were also arrested without a Warrant and petitioner was threatened with the arrest of his mother.

Petitioner contends that his confession was coerced as a matter of law. Prior to the introduction of the confession, the trial court properly heard testimony relating to the voluntary character of the confession out of the hearing of the jury and the petitioner proved the existence of many facts which this court frequently has held to be relevant on the issue of coercion:

That he was a Negro,[7] nineteen years of age,[8] had a fifth grade education,[9] that he was held incommunicado from about eleven A. M. on Wednesday, October 5, 1955, until

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[7] In ascertaining whether a confession is coerced, this Court gives weight to the fact that defendant is a member of an unpopular racial group. *Chambers* v. *Florida*, 309 U.S. 227, 237, 241; *Ward* v. *Texas*, 316 U.S. 547, 555; *Harris* v. *South Carolina*,

about two P. M., on Friday, October 7th, that he was denied permission to talk to or phone anyone, that relatives were denied the right to see him or speak to him and he was not arraigned,[10] that he was continuously questioned and abused by officers,[11] that he was taken to Little Rock where he was given a lie detector test and on being returned to Pine Bluff was offered the hope that if he confessed he would only get five or six years on account of his age.[12] Peti-

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338 U.S. 68, 70, as part of considering his "condition in life," *Gallegos* v. *Nebraska*, 342 U.S. 55, 67. See, Mr. Justice Jackson's dissenting opinion in *Ashcraft* v. *Tennessee*, 322 U.S. 143, 156, 173.

[8] Whether the defendant is mature or immature is important in evaluating whether a confession has been coerced. *Haley* v. *Ohio*, 332 U.S. 596.

[9] The degree of education which a defendant has had is an important factor in evaluating whether a confession has been coerced. *Ward* v. *Texas*, 316 U.S. 547, 555; *Harris* v. *South Carolina*, 338 U.S. 68, 70.

[10] Holding petitioner incommunicado was not only in violation of Arkansas law, Sec. 43-605, Arkansas Statutes (1947), but contrary to the almost universal rule. See Statutes collected in *McNabb* v. *U. S.*, 318 U.S. 332, 342, fn. 7. Although there has been some controversy over whether this alone should vitiate a confession is at least a serious factor to be weighed because, "to delay arraignment, meanwhile holding the suspect incommunicado, facilitates and usually accompanies use of 'third degree' methods. Therefore (this Court) regards such occurrences as relevant circumstantial evidence in the inquiry as to physical or psychological coercion." *Stein* v. *New York*, 346 U.S. 156, 187. See also *Harris* v. *South Carolina*, 338 U.S. 68, 71; *Turner* v. *Pennsylvania*, 338 U.S. 62, 64; *Ward* v. *Texas*, 316 U.S. 547, 555; *Ashcraft* v. *Tennessee*, 332 U.S. 143, 152; *Malinski* v. *New York*, 324 U.S. 401, 412, 417; *Turner* v. *Pennsylvania*, 338 U.S. 62, 66, 67; *Fikes* v. *Alabama*, 352 U.S. ——, 1 L.ed. 2d 246.

[11] Continuous interrogation has been deemed an important factor in evaluating whether a confession has been coerced, *Chambers* v. *Florida*, 309 U.S. 227, 231; *Ward* v. *Texas*, 316 U.S. 547, 555; *Ashcraft* v. *Tennessee*, 322 U.S. 143, 154; *Haley* v. *Ohio*, 322 U.S. 596, 600; *Turner* v. *Pennsylvania*, 338 U.S. 62, 64.

[12] A lighter penalty is one of the inducements which was offered in *Leyra* v. *Denno*, 347 U.S. 556. Mr. Justice Minton wrote,

tioner also stated in his testimony that following his arrest at 11 A. M., on Wednesday, that he was not given any food until he was given a sandwich in Little Rock at 1 P. M., on Thursday and that the only other food which he had prior to the alleged confession on Friday afternoon was his breakfast about ten thirty Friday morning in Dumas (R. 92).

It is universally recognized that "a confession of a person accused of crime is admissible in evidence against the accused only if it was freely and voluntarily made, without duress, fear, or compulsion in its inducement and with full knowledge of the nature and consequences of the confession." 20 Am. Jur. Evidence, Sec. 482. The petitioner did not have the mentality or the maturity to understand the nature and consequences of his confession.[13]

All of the surrounding circumstances should be studied in determining whether or not a confession has been coerced. "It has been said that no general rule can be formulated for determining when a confession is voluntary, because the character of the inducements held out to a person must depend very much upon the circumstances of each case. Where threats of harm, promises of favor or benefits, infliction of pain, a show of violence, or inquisitorial methods are used to extort a confession, then the confession is attributed to such influences. It may be said

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at page 585 (concerning the first confession in *Leyra*): such "threats, cajoling, and promises of leniency . . . to induce petitioner to confess were soundly condemned by that Court."

[13] The petitioner testified that he was 19 years of age (R. 88) and that he went to the fifth grade in school (R. 102). Mrs. S. M. Wimberly, the petitioner's last teacher, testified that "he dropped out of school before the term was out, in fact, Frank was of age and they had to skip him from the fifth grade to the seventh grade—he was fifteen years of age . . . " (R. 119) "They promoted him on an age basis because he was slow learning—he was very slow and lazy" (R. 119).

also, that in determining whether a confession is voluntary or not, the Court should look to the whole situation and the surrounding of the accused." *Dewein* v. *State,* 114 Ark. 472, 170 S.W. 582.[14]

In reviewing the situation in the instant case, it should be remembered that the petitioner was arrested without a Warrant,[15] and was never carried before a Magistrate as required by law,[16] either before or after his confession (R. 65), and this deprived the petitioner of the right to be informed that he could have counsel.[17] It has already been explained, supra, how the petitioner was deprived of food and this was accompanied by prolonged questioning.[18] The petitioner was taken to Little Rock the morning following his arrest,[19] where he was given a lie detector test (R. 105). The suggestion of mob violence was raised twice, the first time by the jailer at Dumas,[20] who allegedly told petitioner

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[14] See *Brown* v. *State,* 198 Ark. 920, 132 S.W. 2d 15.

[15] This was probably in violation of Sec. 43-403 of the Ark. Statutes (1947) as a peace officer may only arrest without a Search Warrant when there are reasonable grounds for believing that the person arrested has committed a felony.

[16] Ark. Statutes (1947) Sec. 43-601, p. 6 herein.

[17] Ark. Statutes (1947) Sec. 43-605, p. 7 herein.

[18] The petitioner was questioned on the night of the slaying (Tuesday) and on Wednesday morning prior to his arrest (R. 64) and was questioned again Wednesday afternoon and Wednesday night although the approximate length of time is not in the record. Petitioner was awakened about six o'clock Thursday morning and taken to Little Rock for questioning and a lie detector test and returned to Pine Bluff late in the afternoon about dark (R. 124), and was then taken to Dumas (See fn. 20 infra) where he was kept awake most of the night by the jailer (R. 90, 126) who questioned him.

[19] Little Rock is 45 miles north of Pine Bluff.

[20] There is a dispute in the testimony as to when the petitioner was taken to Dumas. The petitioner contends that it was Thursday night before the confession and the police officer contends that it was on Friday night after the confession.

that he, the jailer, would be there when the petitioner "would be hung" (R. 127), and where references were made about a colored kid in Mississippi.[21] The most serious threat of mob violence was the one suggested by the Chief of Police (R. 128, 113, 93) and the petitioner testified that he was afraid.[22]

There is no dispute that prior to the defendant's confession that two of his brothers and two of his nephews, ages 10 and 13, were arrested and brought to the City Jail (R. 93, 114, 125) and the petitioner was threatened with the arrest of his mother and his entire family "if I didn't tell the truth" (R. 93, 125).

The trial court and the Supreme Court of Arkansas concluded that because "Several witnesses were present when the confession was made and they all testified that "at no time, were there any threats . . ." of petitioner (R. 133), that the confession was voluntarily given. Most of these witnesses, however, were people who were brought in for the sole purpose of witnessing the formal confession (R. 53) and none of them knew anything concerning the treatment accorded the petitioner prior to that time (R. 77, 81, 85). The confession which was admitted into evidence was made by the petitioner within approximately thirty minutes following his inculpatory statements to the Chief of Police (R. 69, 77, 108) and was made at a time when he was laboring under the crushing burden of having already confessed.[23] There had been no significant change in peti-

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[21] This was probably in reference to the atrocious slaying of Emmitt Till near Money, Mississippi, which was in the news.

[22] The petitioner mentions the threat at Dumas and Chief Young's threat about "thirty or forty people outside" as the thing that made him afraid and caused him to confess (R. 128).

[23] As Mr. Justice Jackson wrote in *U. S.* v. *Bayer*, 331 U.S. 532, 540, once an accused has confessed, "no matter what the inducement, he is never thereafter free of the psychological and practical

tioner's situation from the time of his inculpatory statements until his formal confession and such a confession remains coerced as a matter of law unless the State comes forward to overcome the presumption created by the facts. Mr. Justice Minton stated the general rule when he wrote:

> "As in the case of other forms of coercion and inducement, once a promise of leniency is made a presumption arises that it continues to operate on the mind of the accused. But a showing of a variety of circumstances can overcome that presumption. The length of time elapsing between the promise and the confession, the apparent authority of the person making the promise, whether the confession is made to the same person who offered leniency and the explicitness and persuasiveness of the inducement are among the many factors to be weighed." *Leyra* v. *Denno*, 347 U.S. 556, 588.[24]

A study of all the surrounding facts in this case should lead to the conclusion that not only was the alleged confession not voluntarily made but that the petitioner was denied due process of law in violation of the Fourteenth Amendment to our Federal Constitution.[25] Even in cases

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disadvantages of having confessed." In *U. S.* v. *Bayer*, the Court weighed a time lapse of six months and concluded that this length of time in conjunction with only a modicum of restraint vitiated a previous inducement to confess. See Mr. Justice Rutledge's concurring opinion in *Malinski* v. *New York*, 324 U.S. 401, 420, 428; Mr. Justice Murphy's dissenting opinion in *Lyons* v. *Oklahoma*, 322 U.S. 596, 605, 606.

[24] III Wigmore Sec. 855, states: " . . . the general principle is universally conceded that the *subsequent ending* of an improper inducement *must be shown*; i.e. it is assumed to have continued until the contrary is shown." (Italics in original.)

[25] The factual situation in *Fikes* v. *Alabama*, 352 U.S. ——, 1 L.ed. 2d 246 is very similar to the factual situation in the case at bar and there the Court stated that "the totality of the

where the Court has upheld the admission of the confession, they look to all the surrounding circumstances. In *Stein* v. *New York*, 346 U.S. 156 at page 185, the Court said:

> "The limits in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. What would be overpowering to the weak of will or mind, might be utterly ineffective against an experienced criminal." [26]

Because of the introduction into evidence of the petitioner's coerced confession, the judgment below should not be allowed to stand.

II

Jury Discrimination

The petitioner is a Negro and members of the Negro race were systematically excluded or their number limited in the selection of the jury panel and of the jury commission where no Negro had ever been appointed to the jury commission and where Negroes have represented only 4.3% of the persons called for jury service for the past 17 consecutive terms in a County where Negroes comprise 50% of the total population and 30% of the qualified electors and where names were selected from poll tax lists on which the race of the elector is shown.

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circumstances that preceded the confessions in this case goes beyond the allowable limits. The use of the confessions secured in this setting was a denial of due process." See also *Turner* v. *Pennsylvania*, 338 U.S. 62 and *Johnson* v. *Pennsylvania*, 340 U.S. 881.

[26] This same standard has been followed in other cases. *Fikes* v. *Alabama*, 352 U.S. ——, 1 L.ed. 2d 246; *Watts* v. *Indiana*, 338 U.S. 49; *Lyons* v. *Oklahoma*, 322 U.S. 596.

The Arkansas Statutes provide for the appointment of a three man jury commission by the Circuit Judge at each term[27] and this commission is charged with the responsibility of selecting from the electors of the County a list of grand jurors[28] and petit jurors.[29] The jurors are to be selected from the electors and should be persons "of good character, of approved integrity, sound judgment and reasonable information." The jury commission turns the list over to the Circuit Judge who delivers it to the Clerk[30] and the latter delivers it to the sheriff within 30 days before the next term of court whose duty it is to summons the persons named to attend Court for jury service.[31]

The petitioner filed in proper time his Motion to Quash the Panel of Petit Jurors for the October Term, 1955, of the Jefferson Circuit Court (R. 2) and alleged that he was a member of the Negro race and a resident of Jefferson County, Arkansas and that no member of the Negro race had been selected as a jury commissioner in over fifty years in Jefferson County; and, that although some members of the Negro race had been called for jury duty in the County since 1947, "that Negroes have been discriminated against by an arbitrary and inapportionate limiting of their number by the jury commissioners who have not sufficiently acquainted themselves with the qualifications of all potential jurors, and that this was in violation of the Fourteenth Amendment to the Constitution of the United States.

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[27] Ark. Stat. 39-201, p. 2 herein.

[28] Ark. Stat. 39-206, p. 3 herein.

[29] Ark. Stat. 39-208, p. 4 herein.

[30] Ark. Stat. 39-209, p. 4 herein.

[31] Ark. Stat. 39-210, p. 5 herein.

The petitioner called several witnesses in support of his Motion to Quash the Panel of Petit Jurors. The three present jury commissioners either did not know or had never heard of a Negro serving as a jury commissioner; the County Clerk, Allen Sheppard, answered "No" when asked if he had ever known of a Negro to serve on a jury commission (R. 17); the Circuit Clerk, M. V. Mead, testified that he had lived in Jefferson County for 59 years, had been Circuit Clerk 12 or 13 years and was County Judge and served as a deputy in the Sheriff's office for several years prior to that (R. 19), and that he could not remember a Negro having ever served on the Jury Commission in Jefferson County. Of nine Negro witnesses who had formerly served as jurors in Jefferson County, none could remember any Negro having ever served as a jury commissioner. This undisputed testimony showed conclusively that Negroes have been systematically excluded from serving as jury commissioners in Jefferson County and the Motion to Quash the Jury Panel should have been granted for that reason.

The petitioner alleged in paragraph 23 of his Motion to Quash the Jury Panel (R. 5) that prior to the March, 1947, term of the Jefferson Circuit Court, not a single Negro had been called for jury service in more than 50 years. As proof of that fact, the petitioner introduced as Exhibit No. 3 to his Motion to Quash the Jury Panel, a Motion to Quash the Panel of Petit Jurors which was filed in the Jefferson Circuit Court on March 27, 1947, in a case then pending, styled, *State of Arkansas* v. *Albert Wilkerson, et al.* (R. 38). The essence of the motion was that no Negro had served on a jury for many years and that there was an unlawful discrimination against Negroes by excluding them from jury service. The docket entry in the Circuit Clerk's office shows that the Motion was granted in the *Wilkerson* case and the panel quashed (R. 43).

Petitioner's Exhibit Number 1 to this motion consisted of a certified copy of the 1950 census report of Jefferson County, Arkansas, as prepared by the U. S. Census Bureau and showed the total population of Jefferson County in 1950 to be 76,075, classified as follows:

Native Born			
White	37,792	Negroes	37,835
Foreign Born			
White	360	Other Races	88

Allen Sheppard, County Clerk, testified that he kept the official record of the qualified voters within Jefferson County and that the race of the taxpayer is reflected therein (R. 17). He testified further that he had made an actual count to determine the number of white and colored qualified electors in Jefferson County for the past three years which revealed the following information:

Year	Total No. Electors	No. White	No. Colored
1953	18,315	12,674	5,641
1954	18,887	13,157	5,730
1955	19,452	13,678	5,774

M. V. Mead, the Circuit Clerk, testified that he kept a record of the names of persons who had actually served on jury panels in Jefferson County and the said record was produced in the hearing on this motion (R. 19). The petitioner attempted to prove the total number of Negroes who had served on the jury panel in the County since 1947 by Henry Albright, a deputy sheriff. Mr. Albright testified that he had been a deputy sheriff in Jefferson County for about 18 years and that he did not think that there had been a single Negro juror that he did not know personally (R. 21). The Court objected to the petitioner's request that Mr. Albright look at the record of jurors from the Clerk's office and pick out by name those persons

whom he knew to be Negroes (R. 22), on the grounds that it would unduly delay the trial. Upon the suggestion of the trial judge (R. 22), the proof sought by Mr. Albright's testimony was made by Counsel for the defendant, who had already examined the jury record in the Clerk's office.

Wiley A. Branton, attorney for the petitioner, testified in the hearing on the Motion to Quash the Jury Panel that he had lived in Jefferson County for all of his 32 years and had been active in political and civic matters, had visited the Courts frequently, and felt that he was qualified by knowledge to ascertain what persons were Negroes by looking at the names on the jury record in the Clerk's office (R. 23). He testified further that he had examined the said jury record and found the following information:

Term of Court	Total No. Jurors	Total No. Negroes
October, 1947	31	2
March, 1948	31	0
October, 1948	38	1
March, 1949	24	2
October, 1949	32	2
March, 1950	64	1
October, 1950	29	0
March, 1951	54	2
October, 1951	35	1
March, 1952	31	2
October, 1952	50	1
March, 1953	42	2
October, 1953	46	6
March, 1954	25	1
October, 1954	39	0
March, 1955	40	4
October, 1955	58	2
TOTAL	669	29

Based on the figures just cited, although Negroes comprise 50% of the total population of Jefferson County and 30% of the qualified electors, Negroes have represented only 4.3% of the persons called for jury service for the past 17 consecutive terms of the Jefferson Circuit Court. The highest number of Negroes ever called for any term of Court was 6 in the October Term, 1953, and this number only represented 13% of the total number called. The petitioner contended in paragraph 22 of his Motion to Quash the Jury Panel that only 23 different Negroes had ever been called for jury service and that more than half of those were over the age of 65 years (R. 4). As proof of that fact, 9 Negroes who had formerly served as jurors testified in the hearing on the motion and the average age of the 9 jurors was 68 years and they had lived in the County an average of 41 years. Most testified that they had never served on a jury until within the past 3 or 4 years and 5 of the 9 have served during more than one term of Court (R. 26-36). Of the 2 Negroes on the present panel, one had died prior to the trial and the other was excused for cause. The defendant was tried by an all white male jury (R. 129).

Congress has expressly provided that no citizen possessing all other qualifications shall be disqualified for service as a juror in any court on account of race or color.[32] The Supreme Court of the United States has held that "the constitution of juries is a very essential part of the protection such a mode of trial is intended to secure. *Strauder* v. *West Virginia* (1880), 100 U.S. 303, 25 Law Ed. 664. If there is a denial of the right of Negroes to serve on juries because of their color, then there has been

[32] See Title 18 U.S.C., Sec. 243.

a denial of equal protection of laws as guaranteed by the Fourteenth Amendment.[33]

Since the rulings relating to discrimination on account of race apply to grand juries as well as petit juries, the same ruling should, a fortiorari, apply to the jury commissioners who are charged with the selection of jurors.

The petitioner does not contend that he is entitled to proportional representation or that he is entitled to have a member of his race on the panel or even on the jury that tries him.[34] This court restated the principle that proportional racial representation was not required in *Cassell* v. *Texas* (1950), 339 U.S. 282, 70 Supreme Court 629 in which it stated:

> "Discrimination can arise from the action of Commissioners who exclude all Negroes whom they do not know to be qualified and who neither know nor seek to learn whether there are in fact any qualified to serve. In such a case discrimination necessarily results where there are qualified Negroes available for jury service. With the large number of colored male residents of the County who are literate, and in the absence of any countervailing testimony, there is no room for inference that there are not among them householders of good moral character, who can read

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[33] See:—*Hill* v. *Texas*, 316 U.S. 400, 62 S.Ct. 1159; *Patton* v. *Mississippi*, 332 U.S. 463, 68 Supreme Court 184; *Norris* v. *Alabama*, 294 U.S. 587, 55 Supreme Court 579. This same ruling has also been followed by the Supreme Court of Arkansas. *Maxwell* v. *State*, 232 S.W. 2d 982; *Green* v. *State*, 258 S.W. 2d 56.

[34] This Court has held that proportional representation is not required. See: *Commonwealth of Virginia* v. *Rives*, 100 U.S. 313, 322, 25 Law Ed. 667, 670; *Thomas* v. *Texas*, 212 U.S. 278, 282, 53 Law Ed. 512, 513; *Akins* v. *Texas*, 325 U.S. 398, 404, 89 Law Ed. 1692. The Arkansas Supreme Court has followed this same view in *Washington* v. *State* (1948), 213 Ark. 218, 210 S.W. 2d 307 and in *Smith* v. *State* (1951), 218 Ark. 725, 238 S.W. 2d 649.

and write, qualified and available for grand jury service." [35]

The effect of the testimony of jury commissioners Trulock,[36] Bobo[37] and Williams[38] is to bring the case squarely within the holding in *Cassell* v. *Texas, supra* in which Mr. Justice Reed stated at page 289, "When the commissioners were appointed . . . it was their duty to familiarize themselves fairly with the qualifications of the eligible jurors . . . without regard to race and color. They did not do so here, and the result has been racial discrimination."

The petitioner contends that while the jury commission has gone about to systematically include a few Negroes on the panel, they have done so in such a manner as to further discriminate against the Negro by restricting the num-

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[35] The Court was quoting from *Hill* v. *Texas*, 316 U.S. 400, 404, 62 Supreme Court 1159, 1161.

[36] (R. 9) "A. . . . I felt that in the selection of a jury I could not take anybody that I didn't know. He might be a better qualified man than the one I would call, but still I wouldn't know it, so I was limited again by my knowledge of the people whom I was trying to select . . .

Q. Mr. Trulock, state whether or not you are personally familiar with very many Negroes in this County who might be qualified as jurors? A. I don't think I am sir."

[37] (R. 14) "Q. Mr. Bobo, how broad is your knowledge of Negroes in this County who would be qualified for jury service in your opinion? A. That I couldn't answer. I know quite a few colored people. I have been doing business with them quite a while and I know quite a few. All of them wouldn't be qualified, they don't have poll tax receipts, therefore, wouldn't be eligible for jurors. We had to go by the list, people who paid their poll tax."

[38] (R. 16) "Q. Did you have race in mind when you selected the Negroes for the panel? A. Yes.

Q. Did you feel that there should be some on the panel? A. Yes.

Q. Did you think it should be on a proportional basis or any certain number? A. I didn't give that any thought.

Q. Was anything said as to how many should be on there? A. Nothing in particular. We decided that we should have some on each panel. I think we put some on each panel."

ber to such a few that it would be virtually impossible to actually get a Negro on a particular jury without the approval of the prosecutor, even though there may be Negroes on the panel.[39] It should tax the credulity of this court to say that mere chance resulted in such few Negroes being called for jury service where 50% of this class make up the population of Jefferson County and 30% of the qualified electors.[40]

The situation in Jefferson County, Arkansas, where but a few Negroes have been called for jury service during the past 17 terms of court shows a long continued exclusion and verdicts returned against Negroes by such juries should not be allowed to stand[41] as, "token summoning of Negroes for jury service does not comply with equal protection."[42] It should also be pointed out that it was easy for the jury commission to discriminate against Negroes because they were furnished with a record of the qualified electors and the County Clerk testified that such records show the race of the taxpayer (R. 57).[43] "Obviously that practice makes it easier for those to discriminate who are of a mind to discriminate."[44]

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[39] The state has ten preemptory challenges in a capital case in Arkansas.

[40] In *Hernandez* v. *Texas* (1954), 347 U.S. 475, 74 Supreme Court 667, the petitioner established that 14% of the population of Jackson County were persons with Mexican or Latin American surnames. The petitioner was of Mexican descent and offered evidence showing that for the last 25 years there is no record of a person with a Mexican or Latin American name having served on a jury commission, grand jury or petit jury in Jackson County. The Court adopted the "rule of exclusion" as supplying proof of discrimination as established by *Norris* v. *State of Alabama*, 294 U.S. 587, 55 Supreme Court 579.

[41] *Patton* v. *Mississippi*, 332 U.S. 463, 68 Supreme Court 184.

[42] *Brown* v. *Allen* (1953), 344 U.S. 443, 73 Supreme Court 397.

[43] Ark. Stat. (1947) 3-227 Requires that the race of the tax payer be shown on the poll tax record.

[44] In *Avery* v. *Georgia* (1953), 345 U.S. 559, 73 Supreme Court 891, the jury commissioners printed the names of white persons

In *Avery* v. *Georgia,* 345 U.S. 559, the late Chief Justice Vinson held the system used there unconstitutional because it facilitated discrimination and because the commissioners did not follow a nondiscriminatory course of conduct. The characteristics which condemned the system in the *Avery* case also doomed the system here. They make discrimination easier and require following a course of conduct which operates to discriminate.

The trial court implied that the jury commission has selected many colored people who at their request the court has excused and that their names do not show on the payroll record because they don't draw pay (R. 25) and the Supreme Court of Arkansas, gave weight to this factor when it said "On the other hand it was shown that many others, the numbers undisclosed, had been selected but had not served for different reasons" (R. 138). All jurors are required under the Arkansas law to attend Court in answer to the summons by the Sheriff,[45] under penalty of a fine and if they attend and are then excused from serving for any cause they are still entitled to a fee of $5.00 even though they do not serve.[46] Therefore, the payroll record was probably an accurate record of all Negroes who had been called for jury service.

In any event, the whole of petitioner's evidence in connection with his Motion to Quash the Jury Panel went uncontradicted by the State and therefore should have been granted.[47]

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on white tickets and of Negroes on yellow tickets, and placed them in a box, however, no Negro names were ever drawn from the box.

[45] Ark. Stat. 1947, 39-212 p. 5 herein.

[47] *Reece* v. *Georgia,* 350 U.S. 85, 76 Supreme Court 167.

[46] Ark. Stat. 1947, 39-301.1 p. 5 herein.

CONCLUSION

The petitioner has set forth in his argument a number of events which should show that his confession was coerced and that he was denied due process of law in violation of the Fourteenth Amendment to the Constitution by the introduction of the confession into evidence against him and that his conviction which followed should not be allowed to stand. The petitioner has also made as strong a showing as he possibly could that members of his race were discriminated against in the selection of the jury commission and of the petit jury panel at the time of his trial and for many years prior thereto.

Therefore, because of the denial of each of the constitutional rights complained of in this Brief, the petitioner submits that the judgment below should be reversed.

Respectfully submitted,

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Office - Supreme Court, U.S.
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JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 99

FRANK ANDREW PAYNE ..... *Petitioner*

v.

STATE OF ARKANSAS ..... *Respondent*

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE
STATE OF ARKANSAS

BRIEF FOR THE RESPONDENT

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Appendix 21

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

N.o 99

FRANK ANDREW PAYNE ..... *Petitioner*

v.

STATE OF ARKANSAS ..... *Respondent*

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE
STATE OF ARKANSAS

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Supreme Court of Arkansas (R. 131) is reported at 295 S.W. 2d 312.

JURISDICTION

The judgment of the Supreme Court of Arkansas was entered November 5, 1956 (R.131), and a petition for rehearing was denied December 3, 1956 (R.141). The petition for a writ of certiorari was granted April 8,

1957 (R.141). The jurisdiction of this Court rests upon 28 U.S.C. § 1257 (3).

QUESTIONS PRESENTED

1. Whether the concurrent findings of the two lower courts that the petitioner's confession was not induced by threats, mistreatment, fear or intimidation were correct.

2. Whether there is substantial evidence in the record to support the finding that the petitioner failed to meet the burden of showing discrimination in the selection of the jury panel and jury commission.

STATUTES INVOLVED

Amendment Fourteen to the Constitution of the United States, 18 U.S.C. 243, and the Statutes of Arkansas (1947) §§ 39-201, 39-206, 39-208, 39-209, 39-210, 39-212, 39-301.1, 43-403, 43-601, 43-605.

STATEMENT

The petitioner, Frank Andrew Payne, was charged by information October 14, 1955, with the crime of first degree murder (R.1). The cause came on for trial January 11, 1956 (R.43). The jury returned a verdict of guilty of first degree murder and fixed Payne's punishment at death in the electric chair (R.130). On appeal to the Supreme Court of Arkansas the conviction was affirmed (R.131). The Supreme Court of Arkansas denied a petition for rehearing December 3, 1956 (R.141).

On October 4, 1955, the day of the murder, Payne was employed at the Bluff City Lumber Company, which was owned and operated by the victim, J. N. Robertson. Evan Reed, also an employee, testified that he left the company office about 5:30 p.m. on the day Robertson was killed, and that the deceased and Payne were

the only ones there when he left. He returned a few minutes after 6:00 o'clock and found Roberston lying on the floor with his head in a pool of blood. The money in the cash drawer was gone. The following day police officers went to Payne's home and found his clothes blood stained. After his arrest Payne pointed out to a witness where he got the iron murder weapon and where he had placed it after striking the deceased (R.136,137). When the officers took Payne to his home, he told them where they would find the money. He said that it was hidden in a piano, and upon searching the piano the officers found $440.00.

In his confession Payne admitted that after locking the back door of the building, he picked up an iron rod and struck Robertson on the head, knocking him to the floor, and then hit him five or six times more. He then removed the money from the cash drawer, left the building, dropped the iron rod in a ditch, and went home. He gave his nephew about 30 or 40 dollars to take home with him (R.99).

FACTS SURROUNDING THE ARREST AND SUBSEQUENT CONFESSION

The arrest was made without a warrant on Wednesday morning October 5, at the Bluff City Lumber Company (R. 63,112). Payne was advised that he was being placed under arrest because of some falsehoods that he had told (R.64). He had been questioned the night of the murder and was questioned again for a short period the afternoon of his arrest (R.64,112).

Sergeant Buck Halsell, of the Arkansas State Police, in order to test them for blood stains, removed Payne's shirt, pants, shoes and socks on the afternoon of October 5 (R.64,70,104,110).

The following morning, October 6, Sergeant Halsell and Pine Bluff Police Chief Norman Young took Payne to State Police Headquarters in Little Rock where he was given a voluntary lie detector test (R.61,64,105). A few minutes after arriving at headquarters in Little Rock, Sergeant Halsell returned Payne's shoes and socks to him (R.57). Chief Young, who was present during the lie detector test, said there were no threats or profanity directed toward Payne (R.65). About noon, Payne was returned to the custody of Sergeant Halsell who brought him two sandwiches (R.7). Halsell, Young and Payne then returned to Pine Bluff where Payne was placed in jail for the remainder of the night (R.66).

The record reflects no more questioning until around 1:00 p.m. on October 7, at which time Payne indicated to Chief Young that he wished to make a statement. Chief Young told him that it was possible that 30 or 40 people would be there within a few minutes, but that he would give him the opportunity to confess in private (R.69,113). Payne then made his confession, and in approximately five minutes, with Payne's approval, the other people were admitted (R.69). The confession was then repeated and transcribed by a court reporter, Mrs. Morah Duensing (R.84). Persons connected with the confession, the investigating officers and disinterested witnesses, all testified that the confession was voluntarily made (R.51,63, 72,76,79,84).

After making the confession, Payne went to the scene of the murder and reenacted it. When he had finished the reenactment and was some 15 or 20 feet from the others present, Bill Miles, a news reporter for the Pine Bluff Commercial, asked him if he had been mistreated in any way. He said that he had not, that he had never been treated nicer (R.72,73).

Late in the afternoon of October 7, after Payne had confessed, he was taken to Dumas by Sergeant Halsell (R.58,66,91,106). He was moved to Dumas on the recommendation of Chief Young and Sheriff Norton (R.106). They had received some telephone calls and felt that it would be best for Payne (R.106).

PETITIONER'S EVIDENCE OF SYSTEMATIC EXCLUSION

In support of his motion to quash the jury panel the petitioner placed into evidence the general characteristics of the population of Jefferson County, the testimony of Jury Commissioners Trulock, Bobo and Williams, and the testimony of his attorney as to the number of Negroes who had actually served on the jury panels since 1947.

The records of the Bureau of Census of the Department of Commerce reflect that for the year 1950 the total population of Jefferson County was 76,075, classified as follows: native born white, 37,792; foreign born white, 360; Negroes, 37,835; other races 88 (R.18). Allen Sheppard, County Clerk of Jefferson County, testified that for the year 1955 the total number of qualified voters was 19,452, 13,678 were white and 5,774 were Negroes (R.18).

Jury Commissioner Trulock testified that he had lived in the county for 57 years and thought he was as well qualified to select either white or Negro jurors as anybody else. He knew many Negroes that he thought were qualified for jury service (R.11). W. E. Bobo, another commissioner, said that he did not know that there was any particular number of Negroes that had to be selected. They did not decide how many Negroes would be selected, they merely opened the list of electors and selected persons they thought would make good jurors. He would have selected a panel including more Negroes

than white if he had thought they were good citizens and reliable in their actions. He knows quite a few colored people and has been doing business with them quite awhile; however, all of them would not be qualified, since they didn't have poll tax receipts (R.14). When they selected Al Pennington, a Negro, on the panel there was nothing special about it as they felt that the jury they were selecting were responsible citizens of the county (R. 15). The third commissioner, E. L. Williams, testified that he remembers that some Negroes were selected for the panel but does not remember how many. He did not give any thought to whether Negroes should be selected on a proportional basis or that there should be any certain number. They thought that some should be on each panel and as he remembered they did put so e on each panel (R.16).

Wiley A. Branton, the petitioner's counsel, testified that he had examined the jury payroll record and found the following information:

TERM OF COURT	TOTAL NO. JURORS	TOTAL NO. NEGROES
October, 1947	31	2
March, 1948	31	0
October, 1948	38	1
March, 1949	24	2
October, 1949	32	2
March, 1950	64	1
October, 1950	29	0
March, 1951	54	2
October, 1951	35	1
March, 1952	31	2
October, 1952	50	1
March, 1953	42	2
October, 1953	46	6

March, 1954	25	1
October, 1954	39	0
March, 1955	40	4
October, 1955	58	2

He knows that from time to time Negroes have been excused from jury service and that their names would not show on the list he testified from (R.24,25). He is also familiar with the fact that Negroes have served on juries in Jefferson County that tried white citizens. He has no information as to how many Negroes may have been selected but were excused by the court (R.26). Several Negro witnesses testified that although they have served on juries they did not remember any Negro ever being a jury commissioner (R.27,29,30,31,32,33,34,35,36).

Based upon the foregoing evidence, the Supreme Court of Arkansas concluded that the confession was properly admitted into evidence and further that the petitioner failed to show any discrimination. Judge Paul Ward, speaking for a unanimous court, said:

> "The sheriff admits that shortly before the confession was actually given he merely informed appellant that there were several people outside the jail. His explanation was that appellant had already indicated he wanted to make a confession and the sheriff thought it would be better to have the confession made in private, having in mind the safety of appellant. Any statement that might have been made to appellant while in jail at Dumas could not have influenced his confession which had already been made the day before. Before the trial court decided to admit appellant's confession in evidence he heard voluminous testimony, in chambers, from all of the officers and people who had been in contact with appellant during his period of confinement before the confession was made. All of them deny that appellant was mistreated in any way or that he was in any way threatened. This

procedure was approved in *McClellan* v. *State*, 203 Ark. 386, 156 S.W. 2d 800, and we are convinced that the confession was properly introduced in evidence. It is true that some of appellant's relatives were arrested soon after he was taken into custody but, as explained, this was done in an effort to prevent the money which appellant was supposed to have taken from the deceased from being disposed of."

* * * * * * * * *

. . . "It is shown by the testimony that the 29 Negroes who had actually served on the jury panel since 1947 did not include all the Negroes who had been selected for service. On the other hand it was shown that many others, the numbers undisclosed, had been selected but had not served for different reasons. The burden therefore was not on the State but on the appellant to introduce testimony showing discrimination."

ARGUMENT

I

CONFESSION

The petitioner claims that he was denied due process when his confession was admitted into evidence. He bases this claim on the alleged facts of being mentally retarded, arrested without a warrant, sustained interrogation, deprivation of food, threats of mob violence, held incommunicado and that members of his family had been threatened with arrest.

The record evidence of being mentally retarded, consists of testimony from a former school teacher, Mrs. S. M. Wimberly, to the effect that the petitioner was slow learning and lazy (R.119). Mrs. Wimberly also testified that over a four-month period the petitioner missed 23 days out of 74 (R.121). The combination of laziness and absenteeism more nearly supports an inference as to the reason for failing grades than does the contention of being mentally retarded.

There is no dispute as to the petitioner's being arrested without a warrant, since under the Arkansas law a peace officer may arrest without a warrant when he has reasonable grounds for believing that the person arrested has committed a felony. Ark Stats. (1947) § 43-403.

As to the petitioner's claim of sustained interrogation the record reveals that petitioner was arrested on the morning of October 5 (R.63). After his arrest he was place in jail and that afternoon was questioned for a short period (R.64). The following morning the petitioner volunteered to take a lie detector test and was

taken to Little Rock for that purpose (R.61). The exact time that the petitioner was taken to Little Rock is not clear from the record, however, it was sometime between 7:00 a.m. and 9:00 a.m. on the morning of October 6 (R.55,64). The petitioner was given a lie detector test and returned to the officers around noon (R.57). After returning to Pine Bluff the petitioner was placed back in jail for the remainder of the night (R.66). The record reflects no further questioning until the next afternoon when the petitioner indicated to Chief Young that he wanted to make a confession (R.69). Of course the phrase "sustained interrogation" is a generalization and could mean constant questioning for ten minutes. The petitioner makes no claim of sustained interrogation over a long period of time, and if he did, the record itself would refute the claim. The record here fails to show any continuous interrogation, hence, the petitioner's allegation in unfounded. Furthermore, the petitioner did not testify that the reason he confessed was due to any sustained interrogation.

Another claim of the petitioner is that he was deprived of food. Chief Young said that the first meal is served at the jail around 8:00 a.m., and the last meal between 4 and 5:00 p.m. He did not know whether the petitioner was fed or not (R.64). The petitioner was placed in jail on October 5 and Chief Young said that it was possible that he was being questioned at the time the prisioners were fed (R.64). The next morning the petitioner was taken to Little Rock and the officers did not know whether he was fed that morning or not (R.56). However, about noon, on October 6, Sergeant Halsell gave him two sandwiches (R.57). The petitioner was then returned to Pine Bluff and placed in jail for the remainder of the night and according to the record was in the jail during the evening meal (R.66). The petitioner was

in jail the next morning, October 7, when the first meal was served, since he remained there until 1:00 p.m. when he told Chief Young that he wanted to confess (R.69). The petitioner admits that he was given a sandwich while at State Police Headquarters (R.89,124). He also said that he was given a candy bar and a bag of peanuts (R.125). The petitioner never says in his testimony that the reason he confessed was because he was hungry. If the officers had intended to starve him into a confession certainly they wouldn't have fed him at all.

The petitioner claims that the suggestion of mob violence was raised twice, the first time by the jailer at Dumas, and again by Chief Young. Any claim relating to what occurred at Dumas is immediately rejected by the record evidence. The evidence is abundant showing that the petitioner was not removed to Dumas until after he had confessed (R.58,60,66,90,91,106). In this connection, the Supreme Court of Arkansas said:

> "... Any statement that might have been made to appellant while in jail at Dumas could not have influenced his confession which had already been made the day before (R.133)."

The second so-called threat of mob violence is based on an inference drawn from the testimony of Chief Young. Young, when asked if he told the petitioner there might be 30 or 40 people there within a few minutes, answered that he told the petitioner it was possible (R.69). Continuing to testify, Young said that the petitioner confessed to him privately, and later on the other people came in (R.69). It is apparent that what Chief Young meant was that there would be other people there to witness the confession. The petitioner said that he became afraid because of the statement of Young and that is the reason he confessed (R.128). However, his demeanor immediately subsequent to this conversation was any-

thing but that of a person in fear. Mrs. Duensing, the reporter who transcribed the confession, testified that the petitioner seemed to be very calm and more interested in what she was doing than in what he was saying. He watched her take the confession in shorthand and would pause as though he wanted to be sure that he did not talk too fast (R.85). This evidence, and the petitioner's demeanor, fails to support the inference of fear of mob violence.

The allegation of being held incommunicado is likewise without foundation. The evidence is clear that the petitioner was arrested about 11:00 a.m. on October 5. He was questioned that afternoon for a short period and returned to the jail for the rest of the night. The next morning he took a lie detector test in Little Rock and was returned to Pine Bluff and again placed in jail for the night. The next day, without further questioning he confessed. Before confessing he was asked if he wanted counsel and he replied that he did not (R.98). Chief Young stated that to his knowledge no one asked to see the petitioner (R.66). Young was asked if he would have permited a lawyer to see the petitioner and he said that he would (R.75).

The petitioner says in his brief that there is no dispute that prior to his confession two of his brothers and two of his nephews were arrested and brought to the City Jail and that he was threatened with the arrest of his mother and entire family if he did not confess. The record itself disputes any such allegations. Chief Young said very frankly that James Davis was arrested and placed in jail overnight. The two minor children were brought to the police station and questioned only after they had volunteered to do so (R.114). The arrest and questioning was obviously done to recover the money stolen

from the victim. No other member of the petitioner's family was even questioned, much less arrested (R.115).

In his confession, the petitioner admitted that he had not been mistreated, neither had he been promised anything in the way of reward or leniency, nor had he been threatened by any officer (R.100). This statement of the petitioner is corroborated by Bill Miles, a reporter for the Pine Bluff Commercial, who privately asked the petitioner if he had been mistreated in any way and the petitioner answered to the effect that he had never been treated nicer (T.72,73).

It is true that the petitioner was not arraigned as required by Ark. Stats. (1947) § 43-601. However, it is the common practice in Arkansas to waive the arraignment as in this case (R.50). The Supreme Court of Arkansas has said many times that by announcing ready for trial and going to trial persons waive their right to have a formal arraignment. *Hayden* v. *State*, 55 Ark 342; *Davidson* v. *State*, 108 Ark. 201. The fact that a confession is obtained during a period of illegal detention does not make confession inadmissible per se. *State* v. *Browning*, 206 Ark. 791. And as was said in *Stein* v. *New York*, 346 U.S. 156:

> "Petitioners confuse the more rigid rule of exclusion which, in the exercise of our supervisory power, we have promulgated for federal courts with the more limited requirements of the Fourteenth Amendment. This, we have held, did not impose rules of evidence on state courts which bind them to exclude a confession because, without coercion, it was obtained while a prisoner was uncounseled and illegally detained. *Stroble* v. *California*, 343 U.S. 181, 197; *Lisenba* v. *California*, 314 U.S. 219."

The procedure for receiving confessions into evidence in Arkansas is for the trial court to hear the testimony

in the absence of the jury as to the circumstances under which the confession was given, and if the court finds that it was not involuntary to submit the question to the jury, after admonishing them to disregard the confession unless it was found to have been voluntarily made. *McClellan v. State*, 203 Ark. 386. This procedure was followed in the case at bar (R.134). And as in *Stein v. New York*, *supra*, there is ample independent evidence of the petitioner's guilt. Consequently, it cannot be determined whether the jury took the confession into consideration when they decided the petitioner's guilt or not.

The petitioner cites many cases to support his contentions that the confession was not voluntary. However, each of the cited cases contains different factual situations than are presented here. The evidence in the record does not show the use of any physical force, nor does it reflect any psychological coercion. The petitioner was not questioned for any unreasonable length of time, in fact, he was questioned on the night of the murder, for a short period the next day, and during a lie detector test. He was not questioned at all on the day he confessed except during the confession itself. His detention prior to the confession was only from about noon on Wednesday until he confessed around 1:00 p.m. on Friday. The circumstances surrounding this confession falls considerably short of showing a coercion.

II

JURY DISCRIMINATION

The petitioner argues that since no Negro has ever served as a jury commissioner in Jefferson County, he has been discriminated against within the meaning of the Fourteenth Amendment; he argues that systematic exclusion of Negroes from serving on grand juries as well

as petit juries has been held to be a denial of the Equal Protection Clause of the Fourteenth Amendment. The petitioner cites no authority to support his jury commission argument and indeed there appears to be none. The jury commissions' sole purpose it to select the persons who shall serve on the jury panels. They are sworn to choose competent and qualified jurors—not to convict. The difference between the function of the jury commissioners and the petit jury is all the difference between deciding a case and merely deciding who shall compose the jury panels. The same contention arose and was answered in *Maxwell v. State*, 217 Ark. 691, 232 S.W. 2d 982, where the Supreme Court of Arkansas said:

> "Appellant further contends that he was discriminated against within the meaning of the Fourteenth Amendment because there were no Negroes on the Jury Commission. We know of no rule making this requirement and the suggestion must be rejected."

In support of his motion to quash the jury panel, the petitioner introduced the United States census figures of 1950 which showed the population of Jefferson County to be 76,075, classified as follows:

Native born white	37,792
Foreign born white	360
Negroes	37,835
Other races	88

Allen Sheppard, County Clerk, testified that there were the following qualified electors in Jefferson County:

YEAR	TOTAL ELECTORS	WHITE	NEGRO
1953	18,315	12,674	5,641
1954	18,887	13,157	5,730
1955	19,452	13,678	5,774

Under this evidence the petitioner argues that there was a systematic exclusion of Negroes from jury service. To support his argument he cites *Hill* v. *Texas*, 316 U.S. 400; *Patton* v. *Mississippi*, 332 U.S. 463; *Norris* v. *Alabama*, 294 U.S. 587. In the Hill case no Negroes had served on the grand jury in 16 or more years. In the Patton case it was shown that no Negroes had served on a grand or petit criminal court jury for 30 years. The same is true in the Norris case where no Negro had served on a grand or petit jury within the memory of witnesses who had lived there all their lives. In the case at bar even the payroll record, which did not reflect all the persons chosen, showed that Negroes have been selected for jury service on practically every panel since 1947. Two Negroes were on the panel at the term during which the petitioner was tried. Consequently, any inference of systematic exclusion is repelled by the petitioner's own evidence.

A similar lack of evidence arose in *United States* v. *Brandt*, 139 F. Supp. 349 (N. D. Ohio E. D., 1955), and the Court said:

> "Yet no evidence as to the number of colored persons who were summoned for petit jury service has been submitted. This serious void in the evidence cannot be filled by argument based upon speculation and conjecture."

Petitioner insists that the jury commission systematically included a few Negroes on the panel, but they did it in such a manner as to further discriminate by restricting the number selected. However, there is nothing in this record to substantiate such an assertion.

The fact that the jury commissioners selected Negroes for the panel satisfies the burden placed on the State under the holding in *Patton* v. *Mississippi*, 332 U.S. 463,

and the burden then devolved on petitioner to show that the jury commissioners practiced "evasion". There is no such showing. The language of this Court in *Akins* v. *Texas*, 325 U.S. 398, is a complete answer to the petitioner's assertion. This Court said:

> "Petitioner's sole objection to the grand jury is that the 'commissioners deliberately, intentionally and purposely limited the number of the Negro race that should be selected on said grand jury panel to one member.' Fairness in selection has never been held to require proportional representation of races upon a jury. *Virginia* v. *Rives*, 100 U.S. 313, 322-23; *Thomas* v. *Texas*, 212 U.S. 278, 282. Purposeful discrimination is not sustained by a showing that on a single grand jury the number of members of one race is less than that race's proportion of the eligible individuals. The number of our races and nationalities stands in the way of evolution of such a conception of due process or equal protection. Defendants under our criminal statutes are not entitled to demand representatives of their racial inheritance upon juries before whom they are tried. But such defendants are entitled to require that those who are trusted with jury selection shall not pursue a course of conduct which results in discrimination 'in the selection of jurors on racial grounds.' *Hill* v. *Texas*, *supra*, (316 U.S. 404). Our directions that indictments be quashed when Negroes, although numerous in the community, were excluded from grand jury lists have been based on the theory that their continual exclusion indicated discrimination and not on the theory that racial groups must be recognized. *Norris* v. *Alabama*, *supra*, (294 U.S. 587); *Hill* v. *Texas*, *supra*, (316 U.S. 400); and *Smith* v. *Texas*, *supra*, (311 U.S. 128). The mere fact of inequality in the number selected does not in itself show discrimination."

The petitioner also claims that the testimony of Jury Commissioners Trulock, Bobo and Williams brings this

case squarely within the holding of *Cassell v. Texas*, 339 U.S. 282. In his brief he has taken out of context certain statements made by the commissioners and has used these excerpts in an attempt to stretch the holding in the Cassell case to the one at bar. Since the State of Arkansas, as well as the petitioner, is entitled to some consideration under the United States Constitution, it should be pointed out that Trulock also testified as follows:

"Q. . . . I want to know whether or not your general knowledge of the Negroes in Jefferson County among those who would be qualified for jury service is extensive enough that you could fairly select Negroes to serve on the jury panel?

A. I think this; I have lived in this county for 57 years; I think I would be as well qualified to select either white or black as anybody else.

Q. Do you know very many Negroes who would be qualified for jury service?

A. I think so" (R.11).

Jury Commissioner W. E. Bobo, testified:

"Q. Were you concerned as to how many Negroes should be on the jury panel?

A. Well we didn't know there was any special amount that had to be selected, no.

Q. Did you decide how many you would put on there?

A. Well, no, we didn't decide. We went through the list after we opened the list and we selected those that we thought would make good jurors.

* * * * * * * * * * *

Q. 'Would you have selected a panel including more Negroes than whites?'

A. I think I would if it had been folks who we thought would have been good citizens and who had been reliable in their actions I think, yes" (R.14).

The testimony of the jury commissioners in the Cassell case and in the case at bar are entirely different. In the Cassell case no Negroes were on the grand jury involved. In the present case there were two Negroes on the petit jury panel. The jury commissioners in the Cassell case testified that they did not know any Negroes they thought qualified. Here, the jury commissioners testified that they were acquainted with many Negroes whom they thought were qualified, and that the only reason that more were not named to serve on this particular panel was that they had served on juries within the last year. Trulock said that he did not feel he could name anyone to the jury that he did not know, but this applied to both white and colored. In the Cassell case at page 287 this Court made clear the basis of its decision when it stated:

> "Our holding that there was discrimination in selection of the grand jurors in this case, however, is based on another ground. In explaining the fact that no Negroes appeared on this grand jury list, the commissioners said that they know none available who qualified; at the same time they said they chose jurymen only from those people with whom they were personally acquainted."
>
> . . . . . .
>
> "The statements of the jury commissioners that they chose only whom they knew, and that they knew no eligible Negroes . . ., is discrimination in violation of petitioner's constitutional rights."

The evidence in the case at bar shows no such lack of knowledge.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be affirmed.

Respectfully submitted,

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January 15, 1958

APPENDIX

Ark. Stats. (1947) § 43-403.

Peace officer, when may arrest. A peace officer may make arrest:

First. In obedience to a warrant of arrest delievered to him.

Second. Without a warrant, where a public offense is committed in his presence, or where he has reasonable grounds for believing that the person arrested has committed a felony.